SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 531

ELMER HARTZEL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8253

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

ELMER HARTZEL, Defendant-Appellant

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

[fol. 1] [Caption omitted]

* * * * * * *

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Of the November Term, in the year 1942. 33721

INDICTMENT—Filed December 18, 1942

Count One

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

The grand jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois, at the November Term of said Court in the year 1942, and inquiring for the said division and district, upon their oaths do present and charge that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, heretofore, on or about, to wit, the 26th day of June, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously obstruct the recruiting and enlistment service of the United States, to the injury

of the service of the United States, the United States being then and there at war, by wilfully preparing and causing to be prepared at Chicago, Illinois, a certain document, writing and article, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and dissemination of, said documents, writing and article in Chicago, Illinois, and at other places throughout the United States, to and among certain individuals and organizations, whose names, because of their large number and lack of information on the part of the said grand jurors, it is impracticable and impossible herein to set out in full, among whom were a large number of persons who were then and there available and eligible for recruiting and enlistment in the military and [fol. 3] naval forces of the United States, as well as persons who were then and there liable for military and naval service of the United States under the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940," approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain document, writing and article was entitled, "The British: An Inferior Breed", and was and is in words and tenor as follows: to wit:

THE BRITISH:
AN INFERIOR BREED

Are they degenerate?

Plainly. Never again shall they be permitted to try to bring the slinking death of starvation to Europe, squealing hysterically as they do so about "freedom".

What is the present position of our "protectors", proclaimed saviors of Poland?

Now on the lease-lend dole, they are a kept woman.

Are they a cultured people?

Standing as an outpost to the continent of Europe, they are a parasite on its art, science and civilization.

In what way are they kept flying?

The Germans keep 'em flying wherever they find them. They run at the mouth as well as the bowels.

Will the British Isles be policed?

It will be unnecessary. When the people upon whom they are fastened withdraw their support, they will collapse.

What is the new blasphemy?

Making Christianity a slimy thing for those who crawl and creep by an island breed which—possessed of an empire obtained by aggression—points the finger of guilt at others. They are now fighting for Christ with bloody Joe.

Who betrayed America to the empire of the British-Jewish yellow race?

Rosenfeldt. We are victims of his Infantilism; he cannot stand alone.

Are Jews rushing forward to war after urging you to crush 'em?

No. But when America is exhausted they, as in Russia, will slither forth to sink their fangs into its body.

[fol. 4] *Are Americans united?*

Yes. Externally with the corpus of a degenerate empire; internally with the sick body of "our leader."

What is behind the doctrine of "no appeasement"?

The fear of aggression on the bloated domains of an empire which cannot stand alone;

The inhuman cruelty of America's first blood soaked boom;

The rumble of world revolution—a repercussion of its indecencies;

The effort of the Jew—vicious persecutor of peoples—to save himself;

The disease of a Paralytic who wants to be a hero as compensation for his ailment;

The beginning of insanity as the masses of the so-called "democracies" are led toward the destruction of Europe, homeland of the West.

Why was Pearl Harbor evidence of justice?

While trying to save a yellow race in the Atlantic we were hit a deadly blow by a yellow race in the Pacific. Like a cow hit on the head by a hammer when led to slaughter, we now follow "our leader" as he moves forward on a sick spine to war.

which said document, writing and article, as the defendants, and each of them, then and there well knew, was calculated and intended by the said defendants to induce said persons available and eligible for recruiting and enlist-

ment in the military and naval forces of the United States as aforesaid, to fail and refuse to enlist for service therein, and to induce said persons liable for military and naval service of the United States under the provisions of the said Selective Training and Service Act as aforesaid to refuse to submit to registration and selection for such service aforesaid, as provided by the Act aforesaid, to the injury of the Service of the United States.

And this the defendants did do contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

[fol. 5] Count Two

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, on or about, to wit, the 26th day of June, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, the United States being then and there at war, did unlawfully, knowingly, wilfully, and feloniously cause, and attempt to cause, insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, by wilfully preparing and causing to be prepared at Chicago, Illinois, a certain document, writing and article, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and dissemination of, said document, writing and article in Chicago, Illinois, and at other places throughout the United States, to and among persons who were then and there members of and in the military and naval forces of the United States, among whom were those persons who were then and there subject to the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940," approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain document, writing and article was entitled: "The British: An Inferior Breed", which said cer-

tain document, writing and article is set forth and described in Count One of this indictment and is incorporated by reference herein and made a part of this count as if it were set forth fully herein; that the defendants, and each of them, then and there well knew said document, writing and article was calculated and intended by the defendants to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, all of which the said defendants did do, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

[fol. 6] Count Three

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, on or about, to wit, the 26th day of June, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States, the United States being then and there at war, by wilfully preparing and causing to be prepared at Chicago, Illinois, a certain document, writing and article, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and dissemination of, said document, writing and article in Chicago, Illinois, and at other places throughout the United States, to and among a large number of persons who were then and there available and eligible for recruiting and enlistment in the military and naval forces of the United States, as well as persons who were then and there liable for military and naval service of the United States under the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940", approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain document, writing

and article was entitled, "The Jew Makes a Sacrifice: The Forthcoming Collapse of America", and was and is in words and tenor as follows, to wit:

The Jew Makes a Sacrifice:

The Forthcoming Collapse of America

Our blood soaked boom of the first World War was followed by a speculative orgy, then collapse. A similar maladjustment now seeks an outlet in another blood soaked boom which will end as before. In all of this the Jew—oriental hyphenated American, propagandist for bloody Joe and the British (Jewish) empire—has been an eager participant. Indeed, like a snake forced from its nest, the slimy blood lust of the "holy people" now stands revealed [fol. 7] —for is it not evident that the Jew hates bloodshed only when his own skin is in danger?

Let us consider briefly some of his characteristics.

The mentality of the Jew was exemplified recently by Leon Henderson when he wrote that "in 1942 as our contribution in the way of the merchandise of death, we are prepared to deliver a greater quantity of goods than this entire nation had to keep it alive in 1932". The Jew, in fact, makes his way among those with whom he lives by boring from within—by aggression concealed under holiness and hatred of force. When cornered he makes loud outcrys about the guilt of others who "persecute" him.

He does not engage in many occupations such as that of farmer, sailor, mechanic, necessary for the support of a state; he must, therefore, live among other peoples to prevent his own collapse. Since the weight of the community in which he lives does not rest upon him, his position as a specialized group is unstable: he oscillates back and forth, reflecting as he does so fragments of what he considers the world to be, through all of which runs a thread of egoism which portrays him as a grand parasitic ru'er.

He moves into a community with the idea of retaining his identity while at the same time reducing the disparity between himself and others by lowering standards, as in business. He escapes or is unfitted for many kinds of indispensable work, but makes a loud outcry about persecution when vents for his racialism are interfered with. As he lays concealed or slithers around within "democracy", part of his technique is to stress the need for tolerance,

particularly so if, as in Germany, he is caught at his unclean work.

As a parasite he is sensitive to trends: he feels influence quickly which effect his welfare. Associated with his intrusion into the privacy of others in the interests of his own preservation is a fear of isolation. Connected with his frequent need for overcoming disgust for his person is an emphasis on money, wherewith he buys his way. Among related peoples—Turks, Arabians—he does not make much headway.

The Jew God is used for purposes of the greatest of all idolatries—self Worship and survival. For if a people believe they are "chosen" almost anything they do is regarded as right if it preserves them: God is used to get beyond good and evil. Note, for instance, the two sides of [fol. 8] the Bible—the first teaching vengeance, the second meekness. A vast scope is therewith obtained for emphasizing the side suited to his (or your) needs, that is, God becomes a two faced instrument of torture—a bone crusher for use by the cunning. Today, in fact, almost any crime may be committed in his name in connection with fine words such as "freedom". How else justify blood soaked booms; attempts to starve Europe by blockade; an alliance with bloody Joe; and the massing of enormous quantities of mefi and materials with which to "crush" the Germans—except by offsetting the degeneracy of such acts by declaring them to be dictated by the "spirit".

The oriental Japanese struck at Port Arthur, in 1904, and at Pearl Harbor while negotiating. The Jew does not have their manfulness for open warfare, but he will—while conserving his own blood—eventually strike those with whom he lives in the back. He is now infiltrating into Government jobs under cover of "no race prejudice". He is, in fact, "dying" for the coming of bolshevism by making ready for your collapse. After many of the young men of America are killed—when the sick, the exhausted, the cunning remain—then he will, as in Russia, crawl from his nest.

Are you not weary of the observation that the international parasite survives to see nations come and go? Distinguish then you must between white and yellow races or accept the slaughter of your sons by internal revolution or war abroad. Crush my enemies he screams! But there can be no further appeasement of his blood lust: no peace until

the slaughter he brings to others returns unto himself. He must be eliminated as an active element in the community.

* * * * * * *

which said document, writing and article, as the defendants, and each of them, then and there well knew, was calculated and intended by the said defendants to induce said persons available and eligible for recruiting and enlistment in the military and naval forces of the United States as aforesaid, to fail and refuse to enlist for service therein, and to induce said persons liable for military and naval service of the United States under the provisions of the said Selective Training and Service Act as aforesaid to refuse to submit to registration and selection for such service aforesaid, as provided by the Act aforesaid, to the injury of the service of the United States.

[fol. 9] And this the defendants did do contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Four

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, on or about, to wit, the 26th day of June, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, the United States being then and there at war, did unlawfully, knowingly, wilfully, and feloniously cause, and attempt to cause, insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, by wilfully preparing and causing to be prepared at Chicago, Illinois, a certain document, writing and article, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and dissemination of, said document, writing and article in Chicago, Illinois, and at other places throughout the United States, to and among persons who were then and there

members of and in the military and naval forces of the United States, among whom were those persons who were then and there subject to the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940", approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain document, writing and article was entitled, "The Jew Makes a Sacrifice; The Forthcoming Collapse of America", which said certain document, writing and article is set forth and described in Count Three of this Indictment and is incorporated by reference herein and made a part of this count as if it were set forth fully herein; that the defendants, and each of them, then and there well knew said document, writing and article was calculated and intended by the defendants to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, all of which the said defendants did do, contrary to [fol. 10] the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Five

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, on or about, to wit, the 17th day of August, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States, the United States being then and there at war, by wilfully preparing and causing to be prepared at Chicago, Illinois, certain written statements, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and disseminaton of, said written statements in Chicago, Illinois, and at other places throughout the United States, to and among a large number of persons who were then and there available and eligible

for recruiting and enlistment in the military and naval forces of the United States, as well as persons who were then and there liable for military and naval service of the United States under the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940", approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain written statements are in words and tenor as follows, to wit:

> "Not long ago we 'saved ourselves' by a program of relief—from the enervating effects of which we were unable to rise by manful effort. From the accompanying decay an external enemy was needed upon which to fasten the blame. Uniting with the decaying carcass of the British empire and war against the Germans were taken as solutions to the problem: They serve as counterpoises to our internal breakdown."
>
> "* * * as the people of Europe slowly unite to repel invaders who mouth over phrases about peace, God and civilization, many are beginning to recoil with [fol. 11] horror from a proposed invasion of Americans who, as before would only accentuate world revolution."
>
> "America was betrayed. The butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves by:
>
> "A stench from rotting carcasses of those who would again invade Europe;
>
> "Starvation for millions of British who thought they could starve others;
>
> "Dissolution from an internal war of race against race;
>
> "Occupation by foreign troops until we are able to stand alone; * * *"

which said written statements, as the defendants, and each of them, then and there well knew, were calculated and intended by the said defendants to induce said persons available and eligible for recruting and enlistment in the military and naval forces of the United States as aforesaid, to fail and refuse to enlist for service therein, and to induce said persons liable for military and naval service of the United States under the provisions of the said Selective Training and Service Act as aforesaid to refuse to

submit to registration and selection for such service aforesaid, as provided by the Act aforesaid, to the injury of the service of the United States.

And this the defendants did do contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Six

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, on or about, to wit, the 17th day of August, 1942, in the division and district aforesaid, and within the jurisdiction of this Court, the United States being then and there at war, did unlawfully, knowingly, wilfully, and feloniously cause, and attempt to cause, insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, to the injury of the [fol. 12] service of the United States, by wilfully preparing and causing to be prepared at Chicago, Illinois, certain written statements, hereinafter set forth, and by wilfully publishing, circulating, distributing and disseminating, and causing the publication, distribution and dissemination of, said written statements in Chicago, Illinois, and at other places throughout the United States, to and among persons who were then and there members of and in the military and naval forces of the United States, among whom were those persons who were then and there subject to the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940", approved September 16, 1940, and Acts amendatory and supplemental thereto, which said certain written statements are set forth and described in Count Five of this indictment and are incorporated by reference herein and made a part of this count as if they were set forth fully herein; that the defendants, and each of them, then and there well knew said written statements were calculated and intended by the defendants to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury

of the service of the United States, all of which the said defendants did do, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Seven

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that

Elmer Hartzel,
Elmer William Soller, and
Newell Mecartney,

hereinafter called the defendants, whose full and true names other than as herein stated are unknown to the grand jurors, continuously, from December 8, 1941, up to the date of the return of this indictment, in the division and district aforesaid, and within the jurisdiction of this Court, the United States being then and there at war, unlawfully, wilfully, knowingly, and feloniously did conspire, combine, confederate, and agree together, and with each other, and with other persons to the grand jurors unknown, to violate the provisions of Section 33, Title 50, of the United States Code, that is to say, the defendants conspired to commit the following offenses:

[fol. 13] (a) The United States then being at war, wilfully to cause and attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, by preparing, publishing, circulating, distributing and disseminating, and causing to be prepared, published, circulated, distributed and disseminated, in the Northern District of Illinois, and elsewhere throughout the United States, various documents, writings and articles, which said documents, writings and articles contained statements which would be and were calculated and intended by the defendants, and each of them, to cause and attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States;

(b) The United States being at war, wilfully obstructing the recruiting and enlistment service of the United States, to the injury of the service of the United States, by preparing, publishing, circulating, distributing and disseminating,

and causing to be prepared, published, circulated, distributed and disseminated at Chicago, Illinois, and at other places throughout the United States, various documents, writings and articles, which said documents, writings and articles contained statements which would be and were calculated and intended by the defendants, and each of them, to induce persons available and eligible for recruiting and enlistment in the military and naval forces of the United States to fail and refuse to enlist for service therein, and to induce persons who were and would be liable for military and naval service of the United States, under the provisions of an Act of Congress entitled, "The Selective Training and Service Act of 1940", approved September 16, 1940, and Acts amendatory and supplemental thereto, to refuse to submit to registration and selection for such service, as provided by the Act aforesaid, to the injury of the service of the United States.

And in order to effectuate and further the object of the conspiracy, the defendants, and each of them, did do, among other things, the following overt acts:

1. The defendants, and each of them, on or about June 26, 1942, in the City of Chicago, in the Northern District of Illinois, did prepare, publish, circulate, distribute and disseminate, and cause to be prepared, published, circulated, distributed and *and* disseminated, an article entitled, "The British: An Inferior Breed."

[fol. 14] 2. The defendants, and each of them, on or about June 26, 1942, in the City of Chicago, in the Northern District of Illinois, did prepare, publish, circulate, distribute and disseminate, and cause to be prepared, published, circulated, distributed and disseminated, an article entitled, "The Jew Makes a Sacrifice: The Forthcoming Collapse of America."

3. The defendants, and each of them, on or about August 17, 1942, in the City of Chicago, in the Northern District of Illinois, did prepare, publish, circulate, distribute and disseminate, and cause to be prepared, published, circulated, distributed and disseminated, certain written statements more fully set forth and described in Count Five of this indictment.

4. That during the month of May, 1942, at Chicago, Illinois, in the Northern District of Illinois, the defendant,

Newell Mecartney, did read and approve the articles entitled, "The British: An Inferior Breed" and "The Jew Makes a Sacrifice: The Forthcoming Collapse of America."

5. That on or about August 9, 1942, in the office of the defendant, Newell Mecartney, at 800 West North Avenue, Chicago, Illinois, the defendant, Elmer William Soller, gave a copy of certain written statements more fully set forth and described in Count Five of this indictment to the defendant, Newell Mecartney, for his approval.

6. That on or about August 9, 1942, at Chicago, Illinois, the defendant, Newell Mecartney, did read and approve certain written statements more fully set forth and described in Count Five of this indictment.

7. That on or about April 15, 1942, the defendant, Newell Mecartney, met and conferred with the defendant, Elmer Hartzel, in the office of the defendant, Newell Mecartney, at 800 West North Avenue, Chicago, Illinois.

8. That on or about August 9, 1942, the defendant, Elmer William Soller, met the defendant, Elmer Hartzel, on the southwest corner of Randolph and Michigan Avenue, in the City of Chicago, Illinois, and delivered to the defendant, Elmer Hartzel, approximately 300 copies of certain written statements more fully set forth and described in Count Five of this indictment.

9. That on or about April 15, 1942, the defendant, Elmer William Soller, had a conversation with the defendant, Newell Mecartney, at 800 West North Avenue, Chicago, Illinois.

[fol. 15] 10. That on or about May 15, 1942, the defendant, Elmer William Soller, had a conversation with the defendant, Newell Mecartney, at 800 West North Avenue, Chicago, Illinois.

11. That on or about August 9, 1942, the defendant, Elmer William Soller had a conversation with the defendant, Newell Mecartney, at 800 West North Avenue, Chicago, Illinois;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. Albert Woll, *United States Attorney.*

(Cover)

No. 33721

United States District Court, Northern District of Illinois, Eastern Division

The United States of America

vs.

Elmer Hartzel, Elmer William Soller, and Newell Mecartney

Indictment

Vio. Sections 33 and 34, Title 50, United States Code (Wilfully causing and attempting to cause the insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, and wilfully obstructing the recruiting and enlistment service of the United States, to the injury of the service of the United States, and conspiring so to do.)

A true bill.

Albert H. Rieckman, Foreman.

Filed in open court this 18th day of December, A. D. 1942.

Roy H. Johnson, Clerk. —— ——.

Bail, $——.

[fol. 16] In the District Court of the United States

* * * (Caption—33721) * * *

Arraignment—Dec. 28, 1942

This day comes the United States by the United States Attorney come also the defendants Elmer Hartzel, Elmer William Soller and Newell Mecartney in their own proper persons and being now arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is

Ordered that this cause be and it is hereby set for trial on January 4, A. D. 1943 and it is

Further Ordered that the bond of each defendant be and it is hereby reduced to the sum of Three Thousand ($3,000) Dollars.

* * * * * * *

Appearances of counsel omitted in printing.

* * * * * * *

[fol. 17] In the District Court of the United States

* * * (Caption—33721) * * *

Motion for Directed Verdict—Entered Jan. 8, 1942

This day comes the United States by the United States Attorney come also the defendants Elmer Hartzel, Elmer William Zoller and Newell Mecartney in their own proper persons and by their counsel come also the Jury and alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause and trial of said cause proceeds and thereupon at the close of the Government's evidence the defendant Elmer Hartzel by his counsel enters herein his motion for a directed verdict which motion is hereby overruled to which ruling of the Court the defendant duly excepts and during the examination of witnesses on behalf of defendants the hour of adjournment having arrived it is

Ordered that this cause be and the same is hereby continued to January 9, A. D. 1943 at 10:15 o'clock A. M. for further trial.

[fol. 18] In United States District Court

* * * * * * *

Bill of Exceptions—Filed May 27, 1943

Be it remembered that heretofore on to-wit: the 4th day of January, A. D. 1943, this case came on for hearing before the Honorable William H. Holly, one of the Judges of said Court, whereupon the following proceedings were had and evidence adduced on the trial of the above entitled cause.

Present: Mr. J. Albert Woll, United States Attorney, by Mr. William J. Connor, First Assistant United States Attorney, and Mr. John J. Kelly, Jr., Assistant United States Attorney, Appearing on behalf of the Government;

Mr. Benedict J. Short and Mr. Ode L. Rankin, Appearing on behalf of Defendant, Elmer Hartzell; Mr. William J. Powers, Appearing on behalf of Defendant, Elmer William Soller.

Whereupon, the Government, to maintain the issues on its behalf, introduced the following evidence.

The several witnesses being first duly sworn, testified as follows:

NICHOLAS JAMES ANTHONY, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is the Assistant to the Editor of the Infantry Journal, a service publication; that he is 35 years of age and has registered under the Selective training and Service Act; that his immediate superior is Lieut. Col. Joseph I. Greene of the United States Army; that on June 28, 1942, the United States Infantry Association received through the mails, two articles entitled, "The British: An Inferior Breed" and "The Jew Makes a Sacrifice: The Forthcoming Collapse of America" (Govt. Ex. 2 and 3); that he showed the two articles to Major John Ulmer, United States Army, [fol. 19] and then placed them on Lieut. Col. Greene's desk, whose duty it is, as Secretary of the U. S. Infantry Association, to examine all incoming mail; that Lieut. Col. Greene, after reading the articles, decide[d] the articles were scurrilous and seditious and ordered Anthony to send both of these articles to the F. B. I., which was done; that on August 16, 1942, the U. S. Infantry Association received through the mail an article entitled, "The Diseased Spinal Cord" (Govt. Ex. 5), which Anthony showed to Major Ulmer and Lieut. Col. Greene, and on their instructions Anthony sent the article to the F. B. I.

EDNA ADKINS, called as a witness on behalf of the Government, having been duly sworn, testified that:

She is Secretary of General H. H. Arnold, Commanding General of the United States Army Air Forces, War Department, Washington, D. C.; that anonymous articles entitled, "The British: An Inferior Breed" and "The Jew

makes a Sacrifice: The Forthcoming Collapse of America" (Gov. Ex. 7 and 8), enclosed in an envelope (Gov. Ex. 6) addressed to Major General H. H. Arnold, on June 30, 1942, came across her desk with the incoming mail; that she showed the articles to General Arnold who read them and signed a memorandum, directing that said articles be referred to the Federal Bureau of Investigation, and she mailed the articles and General Arnold's memorandum to the Federal Bureau of Investigation.

JOSEPH HUCKINGS, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is a Lieutenant Colonel on the General Staff Corp, United States Army, stationed at San Antonio, Texas; that sometime during the months of June, July or August, 1942, he received two documents (Govt. Ex. 9-A and 9-B) enclosed in an envelope addressed to Colonel Hastings (Govt. Ex. 9); that the documents were respectively entitled, "The Jew Makes a Sacrifice: The Forthcoming Collapse of America" and "The British: An Inferior Breed"; that they came into his hands in his capacity as Executive Officer to the Chief of the Military Intelligence Division; that he read them; that he showed them to his [fol. 20] immediate superior, Colonel A. W. Roffee, who read them; that he then notified the local office of the Federal Bureau of Investigation, San Antonio, Texas, that he had some documents that might be of interest to them and that he turned these documents over to Agent Holloman of the Federal Bureau of Investigation at San Antonio, Texas.

FRANKLYN BLISS SNYDER, called as a witness on behalf of the Government, having been duly sworn, testified that:

For the past three years he has been President of Northwestern University; that he is 58 years of age and is registered under the Selective Service and Training Act; that in the late spring or early summer of 1942 he received through the mail, two documents (Govt. Ex. 11 and 12), respectively, entitled, "The British: An Inferior Breed" and "The Jew Makes a Sacrifice"; that he looked at them and transmitted them by personal letter (Govt. Ex. 10) to the Federal Bureau of Investigation.

CLAUDE V. CAPERS, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is employed by the American Newspaper Publishers Association; that either in June, July or August of 1942, he, in company with two other employees of the Association, George N. Dale and E. F. Burpee, read Govt. Ex. 13, entitled, "The British: An Inferior Breed", which was on a desk in the office of the Association, located at 360 North Michigan Avenue, Chicago.

GWENDOLYN L. CATTORINI, called as a witness on behalf of the Government, having been duly sworn, testified that:

She is employed by the American Newspaper Publishers Association as secretary to Mr. Dale; that she read Govt. Exs. 13 and 14, entitled, respectively, "The British: An Inferior Breed" and "The Jew Makes a Sacrifice"; that Mr. Dale dictated a letter to Mr. J. Edgar Hoover, F. B. I., Washington, D. C., transmitting these documents; that she [fol. 21] transcribed Mr. Dale's letter (Govt. Ex. 14-A), enclosed the documents, and personally mailed the letter, with enclosures, to Mr. Hoover.

RALPH HENRY WINSLOW, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is the Director of the Club Service Division of the Kiwanis International; that Govt. Exs. 17-A, 17-B, and 17-C, entitled, respectively, "The Jew Makes a Sacrifice", "The Diseased Spinal Cord", and "The British: An Inferior Breed", were received through the regular mail addressed to the Kiwanis International; that he read these exhibits and decided that they should be sent to the F. B. I. because he recognized the possible danger of them; that he is 27 years of age and is registered under the Selective Service and Training Act.

RONALD BARLOW, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is employed as a clerk in the offices of the Lions International; that he is 20 years of age and is registered under the Selective Service and Training Act; that his duty is to open the incoming mail addressed to Lions International; that in June of 1942, while so employed as a clerk,

he opened an envelope addressed to the Lions International, containing a document entitled, "The British: An Inferior Breed"; that he read the document and then turned it over to one of the executives in the office.

ARTHUR ROBINSON, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is employed as Assistant Treasurer of the Lions International, Chicago; that he is 33 years of age and is registered under the Selective Service and Training Act; that in August of 1942 he read in his office the pamphlet entitled, "The Jew Makes a Sacrifice"; that after reading the document he instructed that it be sent to the Federal Bureau of Investigation.

[fol. 22] ROBERT SCHMIDT, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is employed by the Air Line Pilots Association; that he is 29 years of age and is registered under the Selective Service and Training Act; that he received through the mails, in June of 1942, an envelope addressed to the Air Line Pilots Association which contained pamphlets entitled, "The British: An Inferior Breed" and "The Jew Makes a Sacrifice"; that after reading these pamphlets he transmitted them through the mails to the Federal Bureau of Investigation; that in August of 1942 he received through the mails a pamphlet entitled, "The Diseased Spinal Cord" and after reading this pamphlet he sent it to the Federal Bureau of Investigation.

WILLIAM E. KEITH, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is the Assistant Department Adjutant, American Legion, Department of Illinois; that he is 44 years of age and is registered under the Selective Service and Training Act; that as a representative of the Department Commander of the American Legion he received through the mails the pamphlets entitled, "The Jew Makes a Sacrifice" and "The British: An Inferior Breed"; that he read these pamphlets and then sent them to the Federal Bureau of Investigation; that in August, 1942, he received through the mails an article entitled "The Diseased Spinal Cord"; that after reading this article he likewise sent it to the Federal Bureau of Investigation.

O. B. PETERSON, called as a witness on behalf of the Government, having been duly sworn, testified that:

He is the Secretary of the Kiwanis International, with offices in Chicago; that he is 43 years of age and is registered under the Selective Service and Training Act; that in August of 1942 he was shown in his office a copy of a pamphlet entitled, "The Diseased Spinal Cord", which he read.

[fols. 23-27] JOHN T. BINKLEY, JR., a witness for the Government, testified as follows:

Direct examination.

By Mr. Connors:

My name is John T. Binkley, Jr. I am a Special Agent, Federal Bureau of Investigation, United States Department of Justice, in which occupation I have been engaged for a year and ten months. During June, July and August, 1942, I was assigned to the Chicago Field Office and to investigate the facts in the case here on trial.

I have seen the articles entitled: "The British An Inferior Breed", marked Government's Exhibit 9-B; "The Jew Makes A Sacrifice: The Forthcoming Collapse of America", marked Government's Exhibit 9-A; and "A Diseased Spinal Cord", marked Government's Exhibit 5, many times.

In the months of June, July, August and September, 1942, we received several hundred copies of these articles, forwarded through the mails from various recipients.

* * * * * * *

[fol. 28] On September 15, 1942, I came to the United States Marshal's office in this building, and there had a conversation with a prisoner by the name of Lee Bonner. No one else was present during that conversation. After the conversation with Lee Bonner I went to the home of Elmer Hartzell and looked under the bath tub and found a paper bag stuffed with paper under the bath tub in a bath room in his home. In that paper bag I found 188 business size envelopes addressed on a typewriter, all of them bearing the addresses of the individuals who have previously testified in this case, and of the organizations that turned these pamphlets in to us. I also found three copies of

"The British An Inferior Breed", and several copies of "The Jew Makes a Sacrifice: The Forthcoming Collapse of America" stuffed in this paper bag.

Government's Exhibit 35-A, entitled: "The Jew Makes a Sacrifice: The Forthcoming Collapse of America", and Government's Exhibit 35, entitled: "The British An Inferior Breed", are two copies of the originals I found [fols. 29-31] under the bath tub in the same paper bag with the envelopes I spoke of.

This search was made at a rooming house at 21 East 110th Street belonging to Mr. and Mrs. Wintercorn. When I arrived there, the only persons in the house were Mrs. Wintercorn, her young son, Lawrence Wintercorn, and Mrs. Hartzell, wife of the defendent Hartzell. Mrs. Hartzell was not in evidence at the time I rang the bell. The young son answered the door. I observed that Mrs. Wintercorn was ill in bed. I asked Lawrence Wintercorn to accompany me while I looked under the bathtub. He was present at the time I found the pamphlets and envelopes under the bath tub. The bathroom was next door to the room occupied by Mr. and Mrs. Hartzell. The Hartzells lived in a rear room on the second floor. The documents were found in a bath room, stuffed under the bathtub, next door to the room occupied by Mr. and Mrs. Hartzell. I had a conversation with Mrs. Hartzell, and then went to the bath room and found these documents.

Government's Exhibit 36, "The British An Inferior Breed" and Government's Exhibit 37, "The Jew Makes a Sacrifice: The Forthcoming Collapse of America," are copies of pamphlets received in our office from various complaints, that I showed to the defendant, Mr. Soller, while I was questioning him and I asked him if these were copies that he had run off on his mimeograph machine, and he identified them as such copies and placed his initials at the bottom.

* * * * * * *

[fol. 32] *Cross-examination.*

By Mr. Short:

I have seen Hartzel before at the office of the F. B. I. in Chicago. There are 16 or 17 rooms up there. Four of them [fol. 33] are called detention rooms. At that time I think there were only three. The doors are wired like the mesh

of chicken wire, but stronger. The floor we were on is the 19th. Most of the rooms there are office rooms. We have stenographers there. We have no court reporters. The stenographers take statements for us.

I first saw Hartzel on Sunday, September 6, when he was brought into the office. He was in the agents' conference room. There are two large rooms as big as this room that are the conference rooms; and the agents have their desks in there. I could not say how many. They change agents so frequently. I do not know how long the little rooms with the wire doors have been called detention rooms, or who calls them that. There are cots in those rooms. They are pretty good beds with springs on them. There are chairs in the detention rooms. I have never heard those rooms called cells. There is wire on the windows and sometimes there is a padlock on the door.

I had a talk with Mr. Hartzel one evening for approximately five minutes. There were others present. They were not taking notes. I asked Hartzel questions about this case. I did not tell him who I was. He saw me before when we were taking his fingerprints and photograph. That was out in the agents' room. I never was out to the County Jail to see him. I was told he was in the County Jail. I did not have any one go out to the County Jail to see him. I did not receive any message from him while he was in the County Jail. I never saw Hartzell on Chicago Avenue. I was out to his home twice; his wife was there on both occasions. Prior to going out to his home the individual in the County Jail told me where Hartzel lived. That man was Lee Bonner. I did not know what his business was. I do not know what charge there was against him. He was a prisoner in the County Jail. I did not give him any money. Nobody in our office gave him a cent. Bonner did not go with me to the Hartzel home. Hartzel was then in the County Jail. I did not call him up. I saw Mrs. Hartzel when I got down there. I did not call her up before I started down. I believe I went out to the Hartzel home on the same day I talked to Bonner. That was about noon. I met Lawrence Wintercorn out there, who is the son of the woman who owns the building. I met Bonner in the Marshal's office. I did not meet him at the Hartzel home. I [fols. 34-41] went out to the Hartzell home alone. Bonner did not go there at any time. He was in the Marshal's office

when I left him. I was at the Hartzel home about thirty minutes. Mrs. Hartzel was there all the time. The Hartzels' had a one room apartment and in the hallway next to their room was this bathroom. There was no other bathroom on that floor that I know of. Lawrence Wintercorn went into the bathroom with me. He is the son of the woman who owns the house and the bathroom.

I was in the bathroom about five or ten minutes. I was looking for this so called literature that Bonner told me was under the bathtub. Mrs. Hartzel had already signed a waiver of search. Another agent had been sent out there by Mr. Belmont. The waiver was at the office; I had seen it. I introduced myself to Mrs. Hartzel and told her I was one of the F. B. I. agents. We have a form of waiver of search and seizure. We have them signed. I took the papers that I found there back to the office in a brown paper shopping bag. I did not take Mrs. Hartzel with me. I did not go out to the jail to see Hartzel, or notify him that I had taken the papers. I did not see Hartzel until after he was arraigned in the Commissioners' Court; not in this court.

I talked to Hartzel once in our office. That took about five minutes or less. I told Hartzel we had the goods on him. I have been with the F. B. I. since March 17, 1941. Prior to that I practiced law in Texas and New York City. I tried criminal cases in Texas. When I talked to Hartzel there were other agents around, at least one, possibly two.

I was not present when Hartzel was arrested. I only talked to him once for four or five minutes. I did not ask him if he had ever been in trouble before.

The Court: The exhibits which are to be read say something about the defendant Hartzel. You will not consider this as any evidence against Hartzel, but only evidence against the person making the statements.

* * * * * * *

[fols. 42-44] Henry Krueger, Assistant Treasurer Lions Club; testified to receipt through mail of pamphlet: "Diseased Spinal Cord," and sending same to F. B. I.

* * * * * * *

[fol. 45] LAWRENCE WINTERCORN, a witness for the Government, testified as follows:

Direct examination.

By Mr. Connor:

My name is Lawrence Wintercorn; residence 21 West 110th Street. We have lived there for ten years. I recall special agent Binkley coming to our house on September 15, 1942, about two o'clock in the afternoon. He told me his name and that he was an agent of the F. B. I. He asked me to show him our bathroom upstairs. I showed the bathroom to him and he told me to go along to the bathroom with him. It was a private kitchen and bathroom; it is all private. I went along with him. He went into the bathroom; I was going to go downstairs, and he said, "I would like you to see this." Mr. Binkley looked under the bathtub and found a shopping bag full of leaflets. He brought them down to the kitchen. I saw him take them from under the bathtub and saw him take them out. I saw what was in the bag.

(Colloquy between Court and Counsel.)

Mr. Connor: Will counsel come up here?

Your Honor, we did want to introduce a few envelopes yesterday and they insist upon the 180.

The Court: Yes.

Mr. Connor: I have them here now and I am going to have them identified by this witness, the boy.

Mr. Short: What is your point?

Mr. Connor: Yesterday we wanted to introduce just a few envelopes.

Mr. Rankin: Yesterday you had a selected number in the Army Forces and one or two others, and we wanted the whole group together, instead of some specific selected ones.

Mr. Connor: Here is the whole group now.

Mr. Rankin: All right. All this boy knows is he saw a bunch of envelopes.

[fol. 46] The Court: I don't know what he knows. You can ask him.

The Witness: I know I saw a lot of envelopes there with the typewriter names on but I could not remember those

names. The envelopes were of this nature. I saw pamphlets in the package. I recall seeing Government's Exhibit 42, "The Blood Sacrifice." That was one of the pamphlets found in the bathroom under the bathtub.

Cross-examination.

By Mr. Short:

I will be fourteen years of age next week. I did not know Mr. Binkley's name but I would know him if I saw him. I had never seen him before that day that I remember. It was on a Tuesday that I saw him; it was about November. The first time I saw him was when he came to the door at 21 West 110th Street. He was out at our building about fifteen or twenty minutes. No one else was with him. I am pretty sure he came there in a car.

The bathroom I spoke of is on the second floor. It is private with a kitchenette. There are five rooms on that floor, and that is the only bathroom on that floor. There is a bathroom and a living room. Only two people live on that floor. Only two rooms are rented out. The others are bedrooms for our family. Our folks live on the first and second floors. The bathroom and kitchenette are on the second floor. The bathroom is next to the kitchenette. I had not been in that bathroom before that day. That is private. Mr. Binkley must have come about two o'clock in the afternoon. My mother was there at that time. She was in bed all that day. When Mr. Binkley went to the second floor I was the only one who went with him. Besides Mr. Binkley and myself, the lady was on the second floor. Mr. Binkley was in the bathroom about five or ten minutes. I did not go into that bathroom prior to that on that day. That is not a bathroom for our family. It was not locked with a key or anything. It was possible for any one to walk into the bathroom without a key. I went into the bathroom with Mr. Binkley; he asked me to go in with him. He told me he was going to use me as a witness in this case. He has been out there since to see me. I think he was out there once only, when he brought some kind of suit-[fol. 47] cases back with the lady. He did not take suitcases away with him on the day he took the envelopes. He came back about two or three weeks later. I had not seen him between the first day he was there and the day he returned

with the suitcases. I had not been to his office. I saw him again on the second floor here. I had never seen him on the two occasions mentioned. I saw Mr. Binkley yesterday. I got a card telling me to come down. I was told I was not needed yesterday and that I was to come down here again today. The card was from the F. B. I.; I had to bring it with me and they punched it. The man downstairs on the second floor punched my card three times and gave my card back to me. I forgot to bring it today. First, I went to have the card punched and then I went to see Mr. Connor. I only said hello to Mr. Binkley. I did not talk this matter over with him. Nothing was said about this case. I told Mr. Connor about what I have told here. I went over it with him. Mr. Binkley was there at the time. Mr. Binkley had told me to remember what happened in case he needed me as a witness; when we went over it yesterday he only corrected me as to the date. I think he said it was the 15th because I knew it was a Tuesday. He looked it up on the calendar and told me it was the 15th, because he knew the week, and I knew it was a Tuesday. We agreed on that date. I was with him about ten minutes when I had that talk. I don't know what was in the suitcases that he brought back. I am quite sure it was books. I remember I helped him with one up to the room. I did not open them and look into them, and he did not. Nothing was said about where they came from. This is my first experience as a witness and the first time I ever met an F. B. I. man.

Redirect examination:

By Mr. Connor:

I received a card to appear as a witness, and I had that card punched. The card told me to appear on a certain date. That is the card I referred to in my examination.

Mr. and Mrs. Hartzel lived on the second floor. I know Mr. Hartzel; I see him in the courtroom. (Witness identifies defendant Hartzel.)

[fol. 48] LEE BONNER, a witness for the Government, testified as follows:

Direct examination.

By Mr. Connor:

My name is Lee Bonner, now residing in a federal correctional institution at Sandstone, Minnesota. I was in Chicago during the month of September, 1942, residing at the Cook County Jail. I know the defendant Hartzel; I see him in the courtroom. (Witness identifies defendant Hartzel.)

I had a conversation with Mr. Hartzel in the County Jail. He and I were the only ones present. The conversation took place around September 12th or 13th, 1942. Mr. Hartzel said that the Government had not found everything that they were looking for and that if he could find a person that he could trust well enough to get rid of this particular item it would be well worth his time, the payment of a few dollars, the amount was not mentioned. I asked Mr. Hartzel what he had reference to and he told me that the Government was looking for a mailing list with the names of twenty-five members in the army and navy, the armed forces, and said if he could find some one who would destroy it before the Government got it, he would be glad to pay them for it. I told him that if I were released I would be glad to go out and get rid of it for him.

On September 15, 1942, I was in the United States Marshal's office in this building. I know Mr. Binkley. I see him in the courtroom. I had a conversation with Mr. Binkley on that date. I had another conversation on the 13th with Mr. Hartzel along the same lines. There was a note given to me and I asked Mr. Hartzel if I were to go out to his home how would I get in, and he said that wouldn't make any difference, he would fix me up with a note to his wife, which he prepared, addressed to Mrs. Mary Hartzel, 21 W. 110th Street, saying in substance, "This will introduce Lee Bonner. Please allow him to go into our bathroom and take the contents of the brown shopping bag underneath the bathtub"; the note was signed "Elmer Hartzel."

Cross-examination.

By Mr. Short:

My business is that of a dining car steward with the Illinois Central Railroad. I am not a steward now. I am an inmate of a Federal Institution at the present time. [fol. 49] I will be out of that institution in fifty-one days. I was sent there for the impersonation of a federal officer. I was in the County Jail awaiting trial upon that charge. I have been in jail about four times; twice for impersonation, once for obtaining money through trickery, and once I was picked up on suspicion and released. That was on the ground of vagrancy, I guess. I have been engaged in criminal offenses about two years. Before that I was a dining car steward, for about six or seven years. I was born in St. Louis, Missouri. I have been married for thirteen years. My wife is living; I am not living with her when I am out of jail. I have been in four different jails. I did not have to tell the F.B.I. man that. He knew; he had my record. He did not say anything about there being any doubt in the minds of the court or jury about the truth of my statements. I first met the F.B.I. man in the Marshal's office on September 15th. I was in the Marshal's office for a hearing on my trial. My case was in this building, in this court before Judge Holly. I did not speak to the Marshal about this when I was in his office. I spoke to the F.B.I. man. I sent for the F.B.I. man. I told them at the gate that leads to the bullpen in the Marshal's office, that I wanted to see the F.B.I. agent. That was in this building. I had not seen the F.B.I. man or anyone else at the County Jail.

I met Hartzel in the County Jail about September 12. I had known Hartzel about twelve hours before he told me about this matter. Hartzel did not ask me what I was being held for. He just told me he would like to give me a little money. He brought up all of the conversation. Hartzel knew that I had been in jail several times. I was the only one at that time that he could believe; I was the only one he thought could get out there. I did not tell Mr. Hartzel anything about my past. I do not know where my wife is working now—on Wentworth Avenue. I have seen my wife since being confined in this last institution, which is at Sandstone, Minnesota. I have never served time in any penitentiary, just in county jails,

institutions of that kind. I was in the County Jail in Chicago a little better than a month. In my education I finished high school. I belong to the Lutheran Church; I attend it.

I first got into crime in 1927, more than fifteen years ago. I saw Mr. Hartzel after I talked to the F.B.I. man at the County Jail. I did not tell him what had been [fol. 50] done. I saw him in the same tier. I talked to him frequently in that tier during the eveningtime. Hartzel gave me money on several occasions. It wasn't much money; just a quarter or fifteen cents at a time. I never offered to pay it back to him.

I did not know I was going to be a witness until they sent a writ up after me. I never said anything to Mr. Hartzel about going to his home and doing what I did do. I never said a word about it. I was in trouble in Memphis. I served time in the workhouse there. I had been out of jail this time for about eight years. Prior to that it was about four years. My time was not up at the time I was expecting to go out of jail to go to the Hartzel home. It was at the time of my trial. I was in for impersonation and one of the assistants of the United States Attorney was trying to get me into the army at the time. I came over for the hearing before Commissioner Walker to see whether or not I was going into the army. I had been in the army when I was fifteen years old and got discharged before I was sixteen. I was too young to be in the army. I was supposed to be allowed out on the day I came for the hearing, and when the Government could not get me in the army they had to prosecute me on the impersonation charge.

I did not go out to the Hartzel home. I would have gone out there but I did not get out of my imprisonment. My agreement with Hartzel was to go out there if I got out. He knew I had a hearing here at that time and I told him if I got out I would go to his home. I came to be a witness for the F.B.I. in this way. I just got to thinking about it; I will put it this way: Sedition is next to Treason; I had a mother, a wife and a family. That is what made me a witness for the F.B.I. I would not say that I turned hero right away. Sedition is anything that breaks down the morale of the armed forces or any of us. I did not know this case. I knew he was charged with sedition and that was enough for me. I understand

he is charged with sedition; I saw it in the newspapers. Maybe I am not reformed; maybe I am just an American.

I do not know what became of the Hartzel note. It was misplaced. I don't know what I did with it. When I went to get it I did not have it. I did not give it to the F.B.I. I put it under my mattress in the County Jail and when I went to get it, it was gone. I believe I talked to the F.B.I. man before my hearing. There was no ar-[fol. 51] rangement made with the F.B.I. if I furnished them with information. When I talked to the F.B.I. man I did it because of this patriotic spirit that came over me. I did not expect to get any money from Mr. Hartzel after that, and I did not expect to have the F.B.I. do me any favors. I did not ask for any. I do not know of any other reason for changing my mind but the spirit of loyalty to the country. I was turned down by the army. I do not know if the army knew about this story when they turned me down.

JOHN T. BINKLEY, JR., recalled as a witness for the Government, testified as follows:

Direct examination.

By Mr. Connor:

My name is John T Binkley, Jr. I am the same person who testified here. The batch of envelopes marked Government's Exhibit 41 are the envelopes that I found under the bathtub in the bathroom at 21 West 110th Street, Chicago. I have identified each of these envelopes with my signature and the date and file number on the corner of each envelope. (Witness examines envelopes.) Each of these envelopes is so identified. They were identified by me on the same day that I found them under the bathtub. I brought them directly to the Chicago field office and placed my initials and the date on each one. (Witness places an elastic round the envelopes.)

(Envelopes offered in evidence by the Government.)

Mr. Rankin: The materiality does not appear at this time. We object to that.

The Court: Overruled.

(Envelopes received in evidence and marked Government's Exhibit 41.)

JOSEPH F. CARROLL, a witness for the Government, testified as follows:

Direct examination.

By Mr. Kelly:

My name is Joseph F. Carroll, residence, Chicago, Illinois. I am a Special Agent of the Federal Bureau of Investigation, assigned to the Chicago office. I was assigned to that office during the month of September, 1942.

I know Elmer Hartzel; I see him in the courtroom. (Wit- [fol. 52] ness identifies the defendant Hartzel.) I saw the defendant Hartzel on September 9, 1942 in the Chicago office of the Federal Bureau of Investigation, and had a conversation with him at that time. Special Agent, George R. Johnson was present at that time. I asked Mr. Hartzel as to the date and place of his birth and he told me he was born in 1891 at Newcastle, Pennsylvania. He told me he attended grammar and high schools in the area of his birth and completed his education in 1909; that between 1909 and 1917 he held various occupations including one with a butter and egg concern.

Hartzel stated that in 1917 he enlisted with the United States Army and was assigned to the University of Pittsburgh Base Hospital Number 7, and that he saw service overseas with that unit; that he was discharged from the army in New Jersey after the war and between that time and 1923 he was employed in various occupations, one of which was with the Goodyear Tire & Rubber Company, and another as Sanitary Inspector with the City of Akron, Ohio; that during that period of time he attended the University of Akron, Ohio and graduated from there in 1923 with a Bachelor of Science Degree; that between the years 1923 and 1936 he attended the University of Chicago where he majored in Political Economy and related subjects; that between 1926 and 1930 he held various employments, the last of which was with an investment firm in Chicago in the capacity of business analyst; that he terminated his employment with that concern in 1930 because of the depression, and from then until 1937 he held a series of positions in different places including employment in Springfield, Illinois with the State Government and with a private firm in that locality; that in 1937 he began employment anew in

Chicago in a private capacity and held that employment until 1941 when he took employment with the United States Army Aircraft Division as a civilian employee and was assigned to duties at the Packard Motor Car Company in Detroit, Michigan; that he retained his position at that point until approximately November, 1941 when he was transferred as a civilian employee of the United States Army to the Buick Aviation Engine Plant at Melrose Park, Illinois, and remained at that place until July of this year when he was transferred to the Pullman Standard Car & Manufacturing Company on the south side of Chicago.

Hartzel stated that beginning in the year 1938 he began [fol. 53] to write articles. The first article he called to my attention was entitled: "T. V. Smith, Congressman-At-Large." The second one he mentioned was entitled: "The President's Illness." He stated that he wrote this last mentioned article about the first part of 1940; that he also wrote other articles variously entitled: "The Condition of Our Leader," "Roosevelt's Infantile Paralysis," "Revolution Will Come to America," and "Diseased Spinal Cord." Hartzel told me that he had had the articles, "T. V. Smith, Congressman-At-Large" and "Revolution Will Come to America" mimeographed by individuals on the south side of Chicago.

Hartzel stated that he knew Elmer Soller, and said that he met Soller in May, 1941 when he called at Soller's office. In reply to my question as to how he happened to call on Mr. Soller, he stated that prior to calling at Mr. Soller's office he called at the office of the German-American National Alliance in Chicago and asked that he be referred by them to some mimeograph operator in Chicago who might do some work for him. He said that he had been referred by someone in the office of the German-American National Alliance, to the office of Mr. Soller, and that he then called to see Mr. Soller at his office at 800 West North Avenue; that at that time he did not offer any work to Mr. Soller but had merely spoken to him; that it was not until several months later that he had referred any work to Mr. Soller, at which time he was in Detroit, Michigan, as a civilian employee of the United States Army assigned to the Packard Motor Car Company of that city; that he had telephoned to Mr. Soller to see if he was still in business be-

cause of the fact that time had elapsed since he had any contact with him.

Hartzel stated that pursuant to the telephone conversation he had mailed to Mr. Soller an original manuscript entitled: "The Blood Sacrifice" directing Mr. Soller to mimeograph for him six hundred copies of that original; that a few days later through the United States mails, the completed work came from Mr. Soller by American Railway Express, paying $10.00 and some odd cents for the package which had been sent to him collect; that about a month later, having made revisions in the original entitled: "The Blood Sacrifice," he mailed the revised manuscript to Mr. Soller; that he had made the revisions by longhand and had it rewritten by a stenographer in Detroit, and [fol. 54], then mailed the revised article still entitled "The Blood Sacrifice" to Mr. Soller with notations as to the desired number of copies and directions as to margin and space, and asked that four hundred additional copies of the revised article be mimeographed and sent to him; that a few days later the four hundred mimeographed copies were received by him through the mails; that shortly thereafter he was transferred back to Chicago to his position with the Buick Aviation Engine Plant in Melrose Park, Illinois; that he again went to see Mr. Soller but did not give him any work; that he went there to make certain that Mr. Soller was still in business; that a short time later he sent to Mr. Soller two manuscripts which he had himself prepared on a typewriter of his own, entitled, "The Jew Makes a Sacrifice: The Forthcoming Collapse of America" and "The British An Inferior Breed"; that he ordered six hundred copies of each of these articles to be mimeographed and returned to him; that approximately a month later he again sent work to Mr. Soller, this time sending an original manuscript entitled: "The Diseased Spinal Cord" and directed that six hundred copies be mimeographed and given to him.

Hartzel stated that he had folded these articles and inserted them in envelopes and mailed them. He told me that with respect to the originals entitled: "T. V. Smith, Congressman-At-Large" and "Revolution Will Come to America," some had been handprinted by him and others typed by an unknown source. With respect to all of the other articles he stated that the envelopes had been typewritten

by him; that after he had received the mimeographed copies from Mr. Soller of the article, "The Blood Sacrifice," he had submitted a mailing list to a stenographer in Detroit and had these typed from his mailing list and addressed to those persons to whom he desired to send these articles. With respect to the article, "The Blood Sacrifice" he stated that the envelopes were typed by the same stenographer in accordance with his mailing list. With respect to the articles entitled, "The Diseased Spinal Cord," "The British An Inferior Breed" and "The Jew Makes a Sacrifice: The Forthcoming Collapse of America," Hartzell stated that he himself had typed the envelopes containing these articles on a typewriter which he had subsequently acquired.

Mr. Hartzel stated that he did not have any assistance in the distribution of the articles through the mails; that he [fol. 55] had performed all of the manual labor connected therewith, and was solely responsible for the composition of the articles in the first instance.

I believe that is the gist of the conversation that I had with Mr. Hartzel on that date. That conversation was reduced to writing and a statement, as written up, was shown to Mr. Hartzel. (Statement of Hartzel, marked Government's Exhibit 43.)

I have seen Government's Exhibit 43 before. It is a statement which was given to me by Elmer Hartzel, signed by him in the Chicago office of the Federal Bureau of Investigation on September 9, 1942. The signature on the last page is that of Elmer Hartzel. He signed it in my presence. One of the signatures on the same page is that of myself; and the other is the signature of George R. Johnson, who was present during the time that conversation took place. The initials, E. H., in the lower right hand corner of each page are those of Mr. Hartzel. They were put on each page in my presence by Mr. Hartzel. Before he signed the document he read it through, and after reading it, in my presence he initialed the pages.

I know Agent Savage. I had a conversation with him about September, 1942, relative to certain property of Mr. Hartzel; I think it was on the morning of September 8th. Pursuant to that conversation I searched a trunk belonging to Mr. Hartzel, in the upper section of which trunk, in a removable tray, I found a one pound tin can bearing im-

printed on the cover the name "Bokar Coffee Supreme."

(Can marked Government's Exhibit 44.)

Government's Exhibit 44 is the can about which I just testified. At the time I found the can there was contained in it several folded manuscripts variously entitled, "Revolution Will Come to America," "Roosevelt's Illness," "Roosevelt's Infantile Paralysis," and "The Condition of Our Leader," all of these articles being mimeographed; in addition likewise in a folder, a rolled condition, were contained in this can two typewritten articles entitled, "The Jew Makes a Sacrifice: Forthcoming Collapse of America," and "The British an Inferior Breed." In addition to these articles there was also contained in this can likewise in folded condition six mimeographed sheets stapled together bearing the names and addresses of various labor unions throughout the United States.

(Document marked Government's Exhibit 45 for Identification.)

[fol. 56] The Witness: I have heretofore seen Government's Exhibit 45 for identification, being a pamphlet entitled, "Roosevelt's Illness." That document was found in Government's Exhibit 44. My initials appear on the reverse side of each page of the two page document. On the face of each page are the initials "E. H." Those are the initials of Elmer Hartzell and were initialed by him in my presence.

(Document marked Government's Exhibit 46 for Identification.)

I have heretofore seen Government's Exhibit 46 for identification, being a pamphlet entitled, "Roosevelt's Infantile Paralysis." It was one of the documents found in Government's Exhibit 44. My initials appear on that document in the upper right hand corner on the reverse side of each page. The initials "E. H.", being the initials of Elmer Hartzell, appear on the face of each page and were put there by Mr. Hartzell in my presence.

(Document marked Government's Exhibit 47 for Identification.)

Government's Exhibit 47 for identification is a pamphlet entitled "The Condition of Our Leader," and was found in Government's Exhibit 44. My initials appear thereon in

the upper right hand corner on the reverse side of each page. Mr. Hartzell's initials, "E. H." which he placed thereon in my presence appear on the face of the document.

(Document marked Government's Exhibits 48-A and 48-B for Identification.)

I have heretofore seen the last mentioned exhibits. I found them in Mr. Hartzell's trunk in a brown paper sack which was located close to the tin can containing the other documents I have referred to.

I took a specimen of Mr. Hartzell's handwriting on September 11, 1942.

(Document marked Government's Exhibit 49 for Identification.)

I have heretofore seen the last mentioned exhibit. It is not a sample of Mr. Hartzell's handwriting. This document is one of a series of a miscellaneous assortment of notes which were likewise contained in the brown paper sack in the upper section of the trunk belonging to Mr. Hartzell.

(Document marked Government's Exhibits 50-A, B and C for Identification.)

[fol. 57] I have heretofore seen Government's Exhibit 50-A, B and C for identification. They purport to be samples of Mr. Hartzell's handwriting. My initials appear upon those documents in the upper left hand portion of each sheet. They were given to me by Mr. Hartzell on September 11, 1942.

(Document marked Government's Exhibit 51 for Identification.)

I have heretofore seen the last mentioned exhibit which is a scrap of paper in a cellophane wrapper. I have seen that before. I saw it on September 10, 1942 in the office of the Chicago Field Division of the F. B. I. on the occasion of the search I made of a trunk belonging to Mr. Hartzell. This piece of paper was located in a brown paper sack which was located in turn in the upper section of Mr. Hartzell's trunk.

(Document marked Government's Exhibit 52 for Identification.)

I have heretofore seen said document which are scraps of paper contained in a cellophane wrapper. I saw them in the Chicago Field Division of the F. B. I. on September 10, 1942 contained in the said brown paper sack.

(Document marked Government's Exhibit 53 for Identification.)

I have heretofore seen Government's Exhibit 53 for identification, which is five scraps of paper. I saw them on September 10, 1942 in the office of the F. B. I. in said brown paper sack.

(Document marked Government's Exhibit 54 for Identification.)

I have heretofore seen Government's Exhibit 54 for identification, which purports to be numerous writings and scraps of paper. I saw them on September 10, 1942 in the Chicago office of the F. B. I. contained in a brown paper sack located in a trunk belonging to Mr. Hartzell.

(Document marked Government's Exhibit 55 for Identification.)

I saw Government's Exhibit 55 for identification on September 10, 1942, which is numerous scraps of paper, in the Chicago office of the F. B. I., contained in the said brown paper sack.

(Document marked Government's Exhibit 56 for Identification.)

Government's Exhibit 56 for identification is seven scraps of paper upon which appear some handwriting. I have [fol. 58] seen those before on September 10, 1942 in the Chicago office of the F. B. I. contained in said brown paper sack.

(Documents marked Government's Exhibits 57, 58 and 59 for Identification.)

I have seen said exhibits which are scraps of paper. I saw them at the same time and place as the other documents that were found in said sack.

(Document marked Government's Exhibit 60 for Identification.)

I have heretofore seen the last mentioned exhibit which is a pamphlet consisting of fifteen pages, entitled "Revolu-

tion Will Come to America," at the Chicago office of the F. B. I. It was contained in the coffee can marked Government's Exhibit 44.

(Document marked Goverument's Exhibit 61 for Identification.)

I have not heretofore seen that document which purports to be a pamphlet entitled "The Jew Makes a Sacrifice: The Forthcoming Collapse of America."

(Document marked Government's Exhibit 62 for Identification.)

I have heretofore seen Government's Exhibit 62 for identification which is the paper bag in which I found the other articles described. I saw it at the Chicago office of the F. B. I. on September 10, 1942.

(Document marked Government's Exhibit 63 for Identification.)

I have heretofore seen Government's Exhibit 63 for identification which purports to be a list of names entitled "The Congress of Industrial Organizations, 1106 Connecticut Avenue North West, Washington, D. C., dated January 22, 1941." I saw that in the Chicago office of the F. B. I. on September 10, 1942, contained in the coffee can. The initials in the lower right hand corner are those of Elmer Hartzell, put there in my presence.

(Document marked Government's Exhibit 64 for Identification.)

I have heretofore seen Government's Exhibit 64 for identification, being a pamphlet entitled "The British an Inferior Breed," consisting of one page. I saw that in the Chicago office of the F. B. I. on September 10, 1942. It was contained in the said coffee can.

(Document marked Government's Exhibit 65 for Identification.)

I have heretofore seen Government's Exhibit 65 for [fol. 59] identification, being an article entitled "The Jew Makes a Sacrifice: Forthcoming Collapse of America." I saw that at the Chicago office of the F. B. I. on September 10, 1942, contained in the said coffee can.

(Documents marked Government's Exhibits 65-A and 65-B for Identification.)

I have heretofore seen the last mentioned exhibits, consisting of three pages, which are pieces of paper upon which are some writings. I saw them on September 10, 1942 at the Chicago office of the F. B. I. contained in said coffee can.

(Documents marked Government's Exhibits 66 and 67 for Identification.)

I have heretofore seen Government's Exhibits 66 and 67. No. 66 purports to be a waiver of search dated September 6, 1942. I saw that on September 6, 1942 at the residence of Elmer Hartzell at 21 West 110th Street. The signature on the bottom is that of Elmer Hartzell. It was signed in my presence. The other signatures in the lower left hand corner are those of myself and of Special Agent Ralph Gregg, at that time assigned to the Chicago office. Mr. Hartzell signed in my presence.

Government's Exhibit 67, which purports to be a waiver of custody, I saw on September 6, 1942 in the Chicago office of the F. B. I. The signature at the bottom is that of Elmer Hartzell and was signed in my presence. The other signatures in the lower left hand corner are my own and that of A. H. Belmont, Special Agent assigned to the Chicago office.

Cross-examination.

By Mr. Powers:

I did not take any statement from Mr. Soller. I had a conversation with Mr. Hartzell in which he referred to his first contract with Mr. Soller. Mr. Hartzell told me that the first contact he had with Mr. Soller was approximately May or April of 1941, in person at Mr. Soller's office. Mr. Hartzell told me that at that time they did not do any business. Hartzell stated that he was then living in Chicago and was employed with the State of Illinois. I believe he stated he went to Detroit in June of 1941, and that he contacted Mr. Soller from Detroit by telephone. Hartzell said that was shortly after September, 1941, September or October, I am not certain. Mr. Hartzell did not say what the conversation was about.

I asked him as to the nature of the conversation at that [fol. 60] time, particularly as to whether he had asked Mr. Soller if he would do some business for him, but he did not answer me in that regard. He merely stated that he had called Mr. Soller to determine whether he was still in business. He did not specifically state whether or not he had determined that matter. He said he had sent him some business and stated that he sent Mr. Soller a manuscript entitled "The Blood Sacrifice," to mimeograph for him 600 copies thereof. Mr. Hartzell was not certain as to the exact time he sent the manuscript, but he did mention to me an approximate date, which was some time between June and November, 1941. I believe it was close to September. The manuscript was submitted by Mr. Hartzell a few days after the conversation had in September. I believe the first two weeks in September would be correct. He said something about sending other material from Detroit, and stated that within a fairly short period of time after sending the manuscript I just mentioned, that this same article entitled "The Blood Sacrifice" was revised by him and that he sent the revised manuscript to Mr. Soller and directed Soller to make up an additional 400 copies and mail them to him. I believe he said that was in the first part of October, 1941. He stated that he left Detroit in November, 1941. He said there were only two manuscripts sent from Detroit. Mr. Hartzell stated that the 600 copies were sent by Mr. Soller from Chicago to Detroit by American Railway Express.

(Adjournment taken to January 7, 1943.)

Cross-examination.

By Mr. Rankin:

I am 32 years of age, educated in Chicago. I attended grammar school and high school here and received an A.B. Degree from St. Mary's at Mundelein, Illinois, and received a Doctor of Jurisprudence degree at Loyola University in Chicago.

I was not admitted to practice here. I passed the bar examination but prior to being admitted I joined the bureau. I took the examination and passed it and appeared before the Character Fitness Committee on Friday and the next day I moved to Washington to assume my present position.

As yet I have not had an opportunity to be admitted formally.

I have been with the Federal Bureau of Investigation since October, 1940. I am Special Agent of the F. B. I. and as such it is my duty to investigate and gather evidence concerning any violations of the laws of the United States [fol. 61] falling within the purview of our jurisdiction, and to gather evidence in any case in which the United States is or may be a party in interest, whenever I am assigned for that purpose. I was assigned to accompany other agents to Mr. Mecartney's office on September 5, 1942. I was there on that date and later in the afternoon of the same day, I was assigned to locate Mr. Hartzell to ask him to come down to the Chicago office of the F. B. I. for questioning. I did not see Mr. Hartzell on that date.

I first saw Mr. Hartzell between 2:30 and 3:00 o'clock on the following date, September 6, 1942, at his place of residence at 21 West 110th Street, Chicago. At the time I saw Mr. Hartzell I was accompanied by Special Agent Gregg of the Chicago office of the F. B. I. and Special Agent McCabe of the Military Intelligence Division. I talked to Mr. Hartzell at that place for about twenty minutes, and then came down town. Mr. Hartzell came with me.

The statement that was taken was not taken on that date. I did not have a warrant for Mr. Hartzell's arrest on that date. I believe a warrant was taken out subsequently. It did not come into my possession. I knew of the charge that was laid against Mr. Hartzell in the complaint or warrant.

In preparing the statement of Mr. Hartzell, which was shown to me here on the witness stand yesterday, I discussed the fact with Mr. Hartzell that evidence had been gathered by other agents as well as myself.

Mr. Rankin: I note that this exhibit has no corrections on any of the different pages; who typed this exhibit?

The Witness: A stenographer; a lady stenographer in our office. The statements in the exhibit were partly dictated by me to the stenographer. Perhaps I might explain: Mr. Hartzell had previously related to me the facts contained in the statement, and I had taken copious notes during the period of time that Mr. Hartzell was talking, subsequently myself and Special Agent Johnson, accompanied by a stenographer, interviewed Mr. Hartzell in his room in our office, and at that time with the aid of the notes

which I had previously taken during the course of my conversation with Mr. Hartzell and with Mr. Hartzell's approval, dictation was given to the stenographer. As I spoke, however, before the stenographer was permitted by me to take anything down in shorthand, it had to receive [fol. 62] Mr. Hartzell's explicit approval, and in very, very many instances the dictation was given by Mr. Hartzell in his own words, in view of the fact probably he preferred certain grammatical and oratorical constructions in the statement rather than the ones that I had used.

Between Mr. Hartzell and me the statement was constructed. The time of taking this statement on September 8, 1942 was approximately from 10:30 in the morning to 1:30, during which time Mr. Hartzell gave me the information contained in the statement, and then a conference between us was discontinued at that time to permit Mr. Hartzell to have lunch, then at 3:00 o'clock, approximately at that time, I returned and talked with Mr. Hartzell in the presence of the stenographer and Special Agent Johnson, and continued with the statement, and at that time the conference lasted from 3:00 o'clock until approximately 8:00 o'clock P. M. in the evening.

Between those two times the document was built up, constructed and signed. There were carbon copies made of it. Mr. Hartzell read it over. Certain portions were read aloud but in the main not. No one read it aloud to Mr. Hartzell.

At that time I knew I was preparing the statement for use in court. There was a suggestion made to Mr. Hartzell that he need not make the statement unless he wanted to. I made that suggestion to him. I said that the statement he was going to give us was one that might be used against him in a court of law; that he was not obliged to give me a statement, to give the statement he subsequently made. He made no objection. By way of reply he started giving me the statement which is before you.

Mr. Rankin: Q. But he made no reply to your statement direct?

The Witness: A. In this respect, he told me that he intended to plead guilty.

Mr. Rankin: I move that be stricken out, your Honor. I didn't ask him for that. I asked him if he made a reply.

The Court: He said he made a reply, that is an answer.

Mr. Rankin: That ought to go out, your Honor.

The Court: No.

Mr. Rankin: I didn't ask for any volunteered——

The Court: He said, "In this respect."

Mr. Rankin: All right, but he has no right to characterize a reply or volunteer anything, any statements.

[fol. 63] The Court: The objection will be overruled.

Mr. Rankin: May I have the question read?

(Question read.)

That calls for yes or no, your Honor, and not for that kind of a remark.

The Court: I don't think necessarily so. If that was the reply that was the reply.

Mr. Rankin: I didn't ask for it. I asked for a yes or no answer, your Honor.

The Court: I can't agree with you. I can't agree with you.

Mr. Rankin: I take an exception, your Honor.

The Witness: I did not have before me at that time the charge which was made against Mr. Hartzell. He did not say what he was going to plead guilty to. I have prepared other statements from time to time for my organization. It is rather difficult to state how often; perhaps fifteen times. From time to time the taking of statements is required; not every week.

I refreshed my recollection before I came here as a witness by reading the original notes I took at the time I talked to Mr. Hartzell. I did not read this statement over.

I saw the trunk which I mentioned in my testimony at the office of the F. B. I. I did not bring it from the residence. I know who did: Special Agent John Savage of the Chicago office. I first saw the trunk on the morning of September 8, 1942. That was before this statement was prepared. I did not arrange the documents for their introduction here in evidence. I first initialed all of the documents which I removed from the trunk so that I might be able to identify them later, and I submitted them to Mr. Hartzell to identify as his, and he did so by placing his initials on each page of each of the documents. Then I had them placed in an exhibit file for proper retention. They were not placed in these transparent files. Mr. Hartzell was not present at the time the trunk and contents were examined. He was in another room of the Chicago office of the F. B. I. There were documents and papers in the

trunk other than the ones shown here. I do not know of my own knowledge what was done with those, but I have been informed that they were, together with other belongings and possessions in the trunk which were considered irrelevant, returned to Mrs. Hartzell. I determined the relevancy.

[fol. 64] The waiver of search of the premises of Mr. Hartzell was a typewritten form and I filled in the appropriate spaces with the exception of the signature. That was presented to Mr. Hartzell on September 6, 1942 at his place of residence. He was there; I was there with him. That waiver of search did not apply to the trunk; that applied to the search of the premises at 21 West 110th Street, which was his home. The trunks were not recovered there.

JOHN J. SAGE, a witness for the Government, testified as follows:

Direct examination.

By Mr. Kelly:

My name is John J. Savage, residence, Chicago, Illinois; business, Special Agent of the Federal Bureau of Investigation, assigned at present to the Chicago Field office. I was so assigned in the month of September, 1942.

I know Elmer Hartzell; I see him in the courtroom sitting at the table.

On September 6, 1942, I had occasion to go to 21 West 110th Street. Special Agent Carroll, Agent Johnson, Agent Gregg, and Agents McCabe and Harris of the Military Intelligence were with me. I assisted Agent Gregg in the search of the premises occupied by Mr. and Mrs. Hartzell at that address. I conducted a search through the premises at that time.

(Document marked Government's Exhibit 68 for Identification.)

I have heretofore seen the articles and postcard, and slip of paper, on which something is written, contained in the cellophane wrapper. I saw the postcard in the room occupied by Mr. and Mrs. Hartzell, and the writing on the slip of paper was done by myself on the 6th of September, of last year.

(Postcard marked A and slip of paper marked B.)

After the search of the room, Agent Gregg prepared a list of the articles which were found in the room, which were considered pertinent to the investigation, and had Mrs. Hartzell sign her name to that list for the purpose of designating the articles which we were taking to the Field Office of the F. B. I.

On September 7, 1942, I had a conversation with one, [fol. 65] Andrew D. Schimant, pursuant to which I searched a small closet, or storeroom, located in the basement of his home at 149 South 14th Street, Maywood, Illinois. In that closet were a considerable number of cardboard boxes, several trunks, a suitcase and a Multiplex typewriter. We were unable to open a suitcase and the trunks. After examining the cardboard boxes we proceeded to take the boxes and the two trunks, the suitcase and the Multiplex typewriter, to the Field Office of the F. B. I. The trunks and boxes were tagged with the name and place where they were found and placed in a storeroom in the office of the F. B. I. in Chicago, and also on the tag was placed an identification mark.

(Document marked Government's Exhibit 69 for identification.)

Government's Exhibit 39 for identification, purporting to be a number of scraps of paper with writings on them, were found on September 8, 1942, in the garbage can located in the rear of the premises at 21 West 110th Street, Chicago. They were found by Special Agent McCarthy and myself and Agent Harris of the Military Intelligence. When found we placed them in envelopes and returned them to the office of the F. B. I. in Chicago.

Cross-examination.

By Mr. Rankin:

Special Agent McCarthy of our office and Jack Harris of the Military Intelligence were with me when I went to the Maywood place. Mr. Hartzell was not with me.

I saw Mr. Hartzell just a few minutes when we were at the Hartzell home. He was not with me on the occasion when we went to the Maywood place. I saw him on his premises.

RALPH J. GREGG, a witness for the Government, testified as follows:

Direct examination.

By Mr. Kelly:

My name is Ralph J. Gregg, residence, Birmingham, Alabama; occupation, Special Agent for the Federal Bureau of Investigation, assigned at present to the Birmingham field division.

In the month of September, 1942, I was assigned to the Chicago field division. I know Elmer Hartzell; he is sitting at the end of the counsel table. (Witness identifies defendant Hartzell.)

[fol. 66] On September 6, 1942 I saw Mr. Hartzell at his residence at 21 West 110th Street, Chicago, Illinois. I had a conversation with him there. Present with me were Special Agent Joseph Carroll of the Chicago field office, and agent McCabe of the Military Intelligence Division of the United States Army. I was introduced to Mr. Hartzell as a special agent of the F. B. I., and Special Agent Carroll identified himself as a special agent of the F. B. I. and introduced me as the same.

I have seen Government's Exhibit 66, being the waiver of search dated September 6, 1942. I saw that at 21 West 110th Street, Chicago, Illinois. I affixed my signature as a witness to the signature of Mr. Hartzell, who signed it in my presence on the date it bears. Pursuant to that waiver we made a search of the room occupied by the Hartzells at that address. I found a Royal portable typewriter and numerous other articles which I took to the Chicago office of the F. B. I.

(Document marked Government's Exhibit 70 for Identification.)

I have seen Government's Exhibit 70 for identification which purports to be a case containing a typewriter. Special Agent Savage and I found that in the Hartzell room. I can identify it because of a tag which I prepared and attached thereto bearing serial number and my initials and the date. Also by a paper bearing the same information including the address at which it was obtained, which was

pasted on the inside of the cover, and also by my initials which I placed on a portion of the frame.

(Government's Exhibit 70, being a typewriter, is admitted in evidence.)

ANDREW D. SCHIMENT, a witness for the Government, testified as follows:

Direct examination.

By Mr. Connor:

My name is Andrew D. Schiment, residence, 149 South 14th Avenue, Maywood, Illinois. I own that house and rent apartments in it. I have three apartments. I know the defendant Hartzell; I see him in the courtroom. I rented an apartment to Mr. Hartzell commencing in January, 1942. I think he left in June of that year. When he moved away he said the company had shipped him to South Chicago. He was working in the Buick plant in Melrose [fols. 67-68] Park. He asked me to let him have some place to keep his things until he got a bigger place and he would come and take it. I have a small room under the stair way back and the trunk he got in the basement.

Cross-examination.

By Mr. Short:

I just let Mr. Hartzell take some space in my building to store some things for a while without rent. He paid his rent up when he left.

* * * * * * *

[fol. 69] Mr. Kelly: I will read a few of these pamphlets that have been introduced in evidence to the jury.

Mr. Rankin: But not as to Mr. Hartzell, because no proof has been made as to him.

The Court: I will reserve my ruling; and will tell the jury later.

(Pamphlet Govt's Ex. 2 entitled "The British an Inferior Breed" read to the jury by Mr. Kelly:)

[fol. 70] GOVERNMENT'S EXHIBIT 2

The British:

An Inferior Breed

Are they degenerate?

Plainly. Never again shall they be permitted to try to bring the slinking death of starvation to Europe, squealing hysterically as they do so about "freedom".

What is the present position of our "protectors"; proclaimed saviors of Poland?

Now on the lease-lend dole, they are a kept woman.

Are they a cultured people?

Standing as an outpost to the continent of Europe, they are a parasite on its art, science and civilization.

In What way are they kept flying?

The Germans keep 'em flying wherever they find them. They run at the mouth as well as the bowels.

Will the British Isles be policed?

It will be unnecessary. When the people upon whom they are fastened withdraw their support, they will collapse.

What is the new blasphemy?

Making Christianity a slimy thing for those who crawl and creep by an island breed which—possessed of an empire obtained by aggression—points the finger of guilt at others. They are now fighting for Christ with bloody Joe.

Who betrayed America to the empire of the British-Jewish yellow race?

Rosenfeldt. We are victims of his Infantilism; he cannot stand alone.

Are Jews rushing forward to war after urging you to crush 'em?

No. But when America is exhausted they, as in Russia, will slither forth to sink their fangs into its body.

Are Americans United?

Yes. Externally with the corpus of a degenerate empire; internally with the sick body of "our leader".

What is behind the doctrine of "no appeasement"?

The fear of aggression on the bloated domains of an empire which cannot stand alone;

[fol. 71] The inhuman cruelty of America's first blood soaked boom;

The rumble of world revolution—repercussion of its indecencies;

The effort of the Jew—vicious persecutor of peoples—to save himself;

The disease of a Paralytic who wants to be a hero as compensation for his ailment;

The beginning of insanity as the masses of the so-called "democracies" are led toward the destruction of Europe, homeland of the West.

Why was Pearl Harbor evidence of justice?

While trying to save a yellow race in the Atlantic we were hit a deadly blow by a yellow race in the Pacific. Like a cow hit on the head by a hammer when led to slaughter, we now follow "our leader" as he moves forward on a sick spine to war.

(Pamphlet Govt's Ex. 3 entitled "The Jew Makes a Sacrifice: Forthcoming Collapse of America" read to the jury by Mr. Kelly:)

GOVERNMENT'S EXHIBIT 3

THE JEW MAKES A SACRIFICE:

THE FORTHCOMING COLLAPSE OF AMERICA

. Our blood soaked boom of the first World War was followed by a speculative orgy, then collapse. A similar maladjustment now seeks an outlet in another blood soaked boom which will end as before. In all of this the Jew—oriental hyphenated American, propagandist for bloody Joe and the British (Jewish) empire—has been an eager participant. Indeed, like a snake forced from its nest, the slimy blood lust of the "holy people" now stands revealed—for is it not evidence that the Jew hates bloodshed only when his own skin is in danger?

Let us consider briefly some of his characteristics.

The mentality of the Jew was exemplified recently by Leon Henderson when he wrote that "in 1942 as our con-

tribution in the way of the merchandise of death, we are prepared to deliver a greater quantity of goods than this entire nation had to keep it alive in 1932". The Jew, in fact, makes his way among those with whom he lives by boring from within—by aggression concealed under holiness and hatred of force. When cornered he makes loud outcrys about the guilt of others who "persecute" him. [fol. 72] He does not engage in many occupations such as that of farmer, sailor, mechanic, necessary for the support of a state; he must, therefore, live among other peoples to prevent his own collapse. Since the weight of the community in which he lives does not rest upon him, his position as a specialized group is unstable; he oscillates back and forth, reflecting as he does so fragments of what he considers the world to be, through all of which runs a thread of egoism which portrays him as a grand parasitic ruler.

He moves in a community with the idea of retaining his identity while at the same time reducing the disparity between himself and others by lowering standards, as in business. He escapes or is unfitted for many kinds of indispensable work, but makes a loud outcry about persecution when vents for his racialism are interfered with. As he lays concealed or slithers around within "democracy", part of his technique is to stress the need for tolerance, particularly so if, as in Germany, he is caught at his unclean work.

As a parasite he is sensitive to trends: he feels influence quickly which effect his welfare. Associated with his intrusion into the privacy of others in the interests of his own preservation is a fear of isolation. Connected with his frequent need for overcoming disgust for his person is an emphasis on money, wherewith he buys his way. Among related peoples—Turks, Arabians—he does not make much headway.

The Jew God is used for purposes of the greatest of all idolatries—self Worship and survival. For if a people believe they are "chosen" almost anything they do is regarded as right if it preserves them: God is used to get beyond good and evil. Note, for instance, the two sides of the Bible—the first teaching vengeance, the second meekness. A vast scope is therewith obtained for emphasizing the side suited to his (or your) needs, that is, God becomes a two faced instrument of torture—a bone crusher for use

by the cunning. Today, in fact, almost any crime may be committed in his name in connection with fine words such as "freedom". How else justify blood soaked booms; attempts to starve Europe by blockade; an alliance with bloody Joe; and the massing of enormous quantities of men and materials with which to "crush" the Germans—except by offsetting the degeneracy of such acts by declaring them to be dictated by the "spirit".

The oriental Japanese struck at Port Arthur in 1904, [fol. 73] and at Pearl Harbor while negotiating. The Jew does not have their manfulness for open warfare, but he will—while conserving his own blood—eventually strike those with whom he lives in the back. He is now infiltrating into Government jobs under cover of "no race prejudice". He is, in fact, "dying" for the coming of bolshevism by making ready for your collapse. After many of the young men of America are killed—when the sick, the exhausted, the cunning remain—then he will, as in Russia, crawl from his nest.

Are you not weary of the observation that the international parasite survives to see nations come and go? Distinguish then you must between white and yellow races or accept the slaughter of your sons by internal revolution of war abroad. Crush my enemies he screams! But there can be no further appeasement of his blood lust: no peace until the slaughter he brings to others returns upon himself. He must be eliminated as an active element in the community.

(Pamphlet Govt's Ex. 15A entitled "The Diseased Spinal Cord" read to the jury by Mr. Kelly:)

GOVERNMENT'S EXHIBIT 15A

THE DISEASED SPINAL CORD

Wilson died an invalid; Roosevelt became president one. What is the social significance of his condition?

A clue is given in the statement that syphilis is "the result of an illness of moral, social and racial instincts" of which prostitution is an integral part.[1] Similarly the

[1] Adolph Hitler, Mein Kampf, (N. Y. 1940), p. 349.

breakdown of Wilson after the "peace" was probably connected with reactions from the emotional debauchery of preceding years. It is, therefore, suggested that the epidemic of paralysis in New York State at a later time had a source in the weakening of nervous systems, brought about by the emotional self-masturbation of stories of the "bad" Germans.

Our leader—safe in Washington—escaped the actual horrors of war, but he could not escape the virus of a child's disease.[2] As with syphillis his paralysis is indicative of [fol. 74] severe maladjustments within the nation. He reproduces within his body our internal breakdown: he is in fact a degenerate who now seeks ways of having us cure him of his ailment.

United with a paralytic.

With the cunning and sweetness of a cripple he kept us out of war. His duplicity is in part a result of a lack of coordination between brain and injured nervous system. Connected with the accompanying inferiority is a fear of isolation—a craving to be united. He would as a consequence extend his sickness over all the world. Almost everyone would then be equal, united, with no one able to stand alone.

Not long ago we "saved ourselves" by a program of relief—from the enervating effects of which we were unable to rise by manful effort. From the accompanying decay an external enemy was needed upon which to fasten the blame. Uniting with the decaying carcass of the British empire and war against the Germs were taken as solutions to the problems: they serve as counterpoises to our internal breakdown. For the condition of which his illness is a symptom requires continually widening spheres of action to prevent breakdowns from its ravages.

The enemy within.

Hidden within the present program to save humanity are germs of infantilism, paralysis and death. For we

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[2]Infantile paralysis is a disease of "the spinal cord and the central nervous system. * * * When nerve cells of the brain are involved the type is 'bulbar'. * * * Most of the reported cases occur in younger children." See the bulletin of the National Foundation of Infantile Paralysis, Inc. (N. Y., 1941), pp. 7 and 10.

now follow, not a little child, but a man with a child's disease.

I dare you to hit me said our leader to the "bad" dictators. He now twists on his weak spine as we move irresistably toward the feared spectre—isolation. For as the people of Europe slowly unite to repel invaders who mouth over phrases about peace, God and civilization, many are beginning to recoil with horror from a proposed invasion of Americans who, as before, would only accentuate world revolution.

Crush my enemies screams Jewry; be bold; take the offensive; we'll back you up. We're fighting for freedom says our leader, with his sick body coiled around the brain as with a snake prepared to strike. We're fighting to save Poland say the British hysterically; we hate other peoples aggression.

America was betrayed. The butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves by:

[fol. 75] A stench from rotting carcasses of those who would again invade Europe;

Starvation for millions of British who thought they could starve others;

Dissolution from an internal war of race against race;

Occupation by foreign troops until we are able to stand alone; and at last

The appointment of a bedside cabinet to investigate the condition of (Rosenfeld) our leader.

Government's Exhibit No. 43, being the Statement of Elmer Hartzell, was received in evidence, read to the jury, and is as follows:

GOVERNMENT'S EXHIBIT 43

Chicago, Illinois
September 9, 1942.

I, Elmer Hartzel make the following voluntary statement to Joseph F. Carroll and George R. Johnson whom I know to be Special Agents of the Federal Bureau of Investigation. No threats or promises of any kind have been made to secure this statement from me and I know that anything I say herein may be used against me in a court of law.

I was born September 9, 1891 in New Castle, Pennsylvania and am of remote Scotch, Irish and German descent. Both of my parents were also born in this country in New Castle, Pennsylvania. I attended public grammar school in the city of my birth from 1897 to 1906 and the Grove City Preparatory School at Grove City, Pennsylvania from 1906 until 1909.

Between the years of 1909 and 1917 I worked at various jobs including employment with a wholesale butter and egg firm then located at 205 Ferry Street, Pittsburgh, Pennsylvania and the Pennsylvania Railroad, my employment at the latter place being as a switchman at Youngstown, Ohio.

In May 1917 I enlisted in the United States Army and was assigned to the University of Pittsburgh Base Hospital #27. As a member of the base hospital #27 I saw eighteen months duty overseas. I was honorably discharged from the Army at Camp Dix, New Jersey on April 1, 1919.

Between 1919 and 1923 I held various jobs, among them being employment in the Production Control Department of the Goodyear Tire and Rubber Company at Akron, Ohio and also as a sanitary inspector with the Health Department of the City of Akron, Ohio. At the same time during [fol. 76] this period I attended the University of Akron, Ohio where I majored in Business Economics, being graduated therefrom in 1923 with a Bachelor of Science degree. Between 1923 and 1926 I was a student at the University of Chicago in the Department of Commerce. I again majored in Business Economics and related subjects.

In 1927 I secured employment as an investment statistician with the National Bank of the Republic in Chicago, Illinois now merged with City National Bank and Trust Company. At the end of 1927 I resigned this position and for the next six months worked for the Fitch Publishing Company on Pearl Street, New York City. In September of 1928 I began employment with Kissel, Kinnicutt and Company on West Adams Street, Chicago, Illinois as an investment analyst, remaining there until that office was closed in the financial crash of 1930.

Between 1933 and 1938 I was employed at various times with the State of Illinois, Department of Mines and Minerals at Springfield, Illinois, Fernandes and Company, an investment firm at Springfield Illinois, The Cook County Bureau of Public Welfare, Stock Yards Station, Chicago,

Illinois, and in the performance of part-time work in the library of the University of Chicago.

In the latter part of 1938 I assumed employment with the Division of Unemployment Compensation of the State of Illinois, which is located in the Merchandise Mart at Chicago, Illinois. I remained there until July 15, 1941 at which time I became a civilian employee of the Aircraft Division of the United States Army Air Forces, Audit Section being assigned as a senior fiscal accounting clerk to duties at the Packard Motor Car Company in Detroit, Michigan. I remained at this latter firm until November 1, 1941 when I was transferred, still in the capacity of a civilian employee of the Army, as indicated above, to the Buick Aviation Engine Plant in Melrose Park, Illinois, remaining there until June 13, 1942 at which time I was transferred to the Pullman Standard Car and Manufacturing Company, 910 East 103rd Street, Chicago, Illinois.

Aside from certain articles concerning Business Economics and related subjects which I had published in the Harvard Business Review, Journal of Political Economy and the Journal of Business Economics, University of Chicago and the Accounting Review, other writings which I composed are as follows:

The case of T. V. Smith; Congressman at Large.
[fol. 77] Revolution Will Come to America.
The President's Illness.
The Blood Sacrifice.
The Jew Makes a Sacrifice; The Forthcoming Collapse of America.
The British: An Inferior Breed.
The Diseased Spinal Cord.

With references to these above enumerated articles I should like to make the following remarks:

The article concerning T. V. Smith was comprised of about three mimeographed pages. I had about 250 copies of this article mimeographed by a young man whose name I do not now recall, who did typing and mimeographing work from his residence on East 57th Street near South University Avenue. When I submitted the manuscript to him for mimeographing it was handwritten in my writing. This occurred approximately in the year 1938.

With respect to the article entitled "Revolution Will Come to America" I composed this in approximately Jan-

uary of 1941. This article was composed of two parts, the first part dealing with the tendency of this country toward war and hinting at the potential results thereof, the second part dealing with what I considered to be pertinent quotations from prominent personages. I had 200 copies of this article mimeographed by a woman who resides on East 57th Street near South Harper Avenue. The original copy was handwritten. I do not recall this woman's name but she did the work from her residence at which place she occasionally did some public typing. In mimeographing the copies of my article she used a hand operated mimeograph machine. This woman was between thirty and thirty-five years of age and was married. Her residence was located on the first floor in the middle of the block on the south side of 57th Street.

The next article that I wrote was entitled "The President's Illness" and I had about 200 copies of this article mimeographed by the young man referred to above who operated from his residence near 57th and University. I do not recall the specific date that I composed this article but it was within a few months after my writing of the "Revolution Will Come to America."

I composed the article entitled "The Blood Sacrifice" while I was employed at the Packard Motor Car Company in Detroit, Michigan. I had 1000 copies of this article mimeographed by Elmer Soller of the Reliable Letter and [fol. 78] Addressing Company located at 800 West North Avenue. At this time I might mention how I came to have business relations with Soller.

While I was still employed with the Division of Employment Compensation for the State of Illinois, approximately in May of 1941, being desirous of making connections with someone who was professionally engaged in doing mimeograph work I began to look for a contact.

I went to the office of the German American Alliance which is located on North Avenue within a couple of blocks of Halsted Street, believing that they might know someone who could do mimeograph work who was averse to war against Germany. I did not speak to any official of the organization but merely presented a request to two women who were at that time working in the office of the German American Alliance, that they refer me to some mimeographer that they knew. After consulting some list in their office they referred me to the Reliable Letter and

Addressing Service, 800 West North Avenue which is operated by Elmer Soller.

I made my first visit to the office of Elmer Soller in approximately May of 1941. At this time he was sharing office space with Hans Reichel an agent for a foreign travel tourist bureau. On the occasion of this first visit to Soller's office I conversed with him concerning his doing some mimeograph work for me.

As I recall I did not have any mimeograph work done for me by Soller before I went to Detroit, Michigan on the occasion of my transfer. In about September, 1941 I telephoned Elmer Soller from Detroit, Michigan using a public pay booth in a drug store located near my place of residence, 1741 East Grand Avenue. At this time I enquired if he was in a position to do some work for me. A few days later I sent him, through the mails a handwritten manuscript in my writing entitled "The Blood Sacrifice."

A few days later a package containing the completed work, namely 600 mimeographed copies of the above entitled article was received by me at my residence, 1741 East Grand Ave., Detroit, Michigan, via American Railway Express. This package was delivered C. O. D. and I paid C. O. D. charges which amounted to approximately $10.00.

In October of 1941 I made certain revisions in this article and had the revised article typed by a public stenographer located on the second floor of a hotel, the name of which I do not recall but which is situated katty corner from the General Motors Building.

[fol. 79] With this revised manuscript I also transmitted to Soller a cash remittance, payment in advance. Attached to the manuscript was a handwritten note directing Soller to make up 400 mimeographed copies and outlining details concerning spacing and margin. A few days later I received through the mail at my address in Detroit, namely 1741 East Grand Avenue, a package containing the completed work.

In November of 1941 I was transferred from Detroit to Chicago in the same capacity to the Buick Aviation Engine Plant in Melrose Park, Illinois. In approximately January, 1942 I stopped at Soller's office concerning some contemplated work.

Several months later in May, 1942 I called in person at Soller's office and handed to him two typewritten manuscripts entitled "The British: An Inferior Breed" and

"The Jew Makes a Sacrifice: The Forthcoming Collapse of America". Soller prepared 600 mimeographed copies of each of these articles, and I called for the completed work a few days later.

In about July, 1942 I submitted to Elmer Soller for mimeographing a typewritten manuscript entitled "The Diseased Spinal Cord". I ordered 600 copies. A few days later I met him on the corner of Randolph and Michigan in front of the public library and he gave me the copies of my article and in payment I gave him about $6.50.

Concerning the above enumerated articles I mailed copies of same to various individuals and organizations which appeared on my mailing list. The mailing list was compiled from various sources such as:

1. World Almanac (containing names of various prominent personages, associations and lists of fraternities, etc.)

2. A government publication containing a list of labor unions.

3. People actively engaged in the America First Committee whose names were mentioned in newspapers.

4. American Legion State and District Commanders, whose names were obtained through telephone directories at the Public Library.

5. Various patriotic organizations such as the "Daughters of the American Revolution" and "We The Mothers Mobilize."

Envelopes for the mailing of my articles were purchased at different places where stationery is sold. Addresses for the envelopes were at first hand printed. All of the others [fol. 80] were typewritten. Until recently I did not own a typewriter myself. The envelopes containing the articles "The Case of T. V. Smith: Congressman at Large" and "Revolution Will Come to America" were addressed by hand. With reference to the original article which I composed and distributed from Detroit entitled "The Blood Sacrifice" it was sent out by me in envelopes which were addressed for me by the same public stenographer located in the hotel situated katty corner from the General Motors Building in Detroit, Michigan. The revised article bearing the same title was placed in the mail by me in Detroit in

envelopes which were addressed by a public typist located in the General Motors Building, Detroit, Michigan.

In about May, 1942 I purchased a Royal Portable typewriter. From that time on I typed the addresses on the envelopes containing the literature I subsequently distributed, using this typewriter to do so. Using this same typewriter I also typed the original manuscripts of the last three articles I wrote as indicated above.

On each occasion after receiving the mimeographed copies of a particular article, as related above, I myself would fold them and place them in the envelope preparatory to mailing them out. In doing this work I did not receive assistance.

With reference to my wife she had nothing to do with the composition of the articles mentioned here and as a matter of fact she protested against my sending them out. She gave me no assistance in the mailing of the articles. There were times when I asked her to assist me but she refused. I know that she did not approve of the articles. I might mention that Mrs. Hartzel's parents came to this country from Czechoslovakia, this indicating what her sentiment might be.

An additional reason for her disapproval of my actions would be the fact that she th ught I might injure our home life. Mrs. Hartzel had a good deal of faith in me and consequently while she could not bring herself to participate with me in my activities she did not actively combat me.

Finally, the prime motive which impelled me in writing and distributing the articles discussed above, was the hope that they might tend to create sentiment against war amongst the white races and in diverting the war from them, to unite the white races against what I consider to be the more dangerous enemies, the yellow races.

I have read the foregoing statement consisting of six [fol. 81] typewritten pages and I fully understand its purport, and acknowledge that everything contained herein is true and correct to the best of my knowledge and belief. I have placed my initials on the first five pages and have affixed my signature to the last page.

'signed' Elmer Hartzel.

Witnesses: Joseph F. Carroll, Special Agent, FBI; Chicago; George R. Johnson, Special Agent, FBI, Chicago.

And Thereupon the Government tendered in evidence its

various Exhibits heretofore identified and severally marked as exhibits in the case but not as yet admitted generally or specifically; and thereupon the defendants objected to the admission of said Exhibits on the ground that they did not tend to prove the charges laid and that they were irrelevant and immaterial and incompetent, which objection the Court overruled and the said Exhibits were received in evidence as follows:

As To All Defendants

The following exhibits were admitted as to all defendants: 1 to 25, 26 to 26c, 28, 30, 33, 34a to 39, 68, and 76 to 80.

As To Hartzel Only

Exhibits 42 to 44, 46 to 48, 49 to 59, 50-a, 50-b, 50-c, 60, 62, 63, 64, 65, 65-a, 65-b, 66, 67, and 69 to 75.

To which ruling of the Court the defendants excepted.

Thereupon the following document was received in evidence as Government's Exhibit 42 and considered by the jury:

Government's Exhibit 42

The Blood Sacrifice

As Americans are made aliens in their own land by the endeavor to save the British—the worst aggressors of history—from effects of their own aggression, attention is directed to a group within which is loud about the virtue of defense by offense, or protecting ourselves by protecting [fol. 82] our "protector." Representatives of this group—Morgenthau, LaGuardia, Blum, Warburg, Lehman, Frankfurter, Hillman, Henderson, Rosenman—are active in putting phrases onto the lips of "our leader" concerning the spirituality of being an arsenal for a foreign power.

From the stupefying after effects of our first blood soaked boom, we have been unable to extricate ourselves by constructive thinking. To recover from its paralyzing effects, a shock has been necessary, a shot in the arm, another blood soaked boom.

In times long past, this need for bloody incentives was propitiated on the altar of religion by human or animal sacrifices. It was, indeed, at last symbolized within Christianity by the sacrifice of the son of God, propounder of a doctrine of gentleness, pity and love. But the Jew has no

such device for sublimating the lust for blood, hence behind his proclaimed horror of force is a distorted blood lust which seeks an outlet.

The Jew is no soldier, but he can quench his thirst for human sacrifice by inciting you to bloodshed against others —the Germans, for instance, who, having analyzed his mentality, object to his indecencies. The Jew does not, in fact, shrink from having you perpetrate another crime against Europe. He would in that way put you on the cross, wailing meanwhile about anti-semitism and his hatred of bloodshed.

Residue of an eastern Mediterranean civilization—the Jew makes his way among you under cover of his holiness. But the universality claimed for his religion is offset by his view of himself as a superlative one who can, at last, only wrong you by wronging God who is, so he thinks, the counterpart of himself.

Hence, to the Jew, democracy means for you to make room for him. He strives, that is, for "freedom" from interference of those among whom he lives: He would have you be tolerant of him in order that he may be more effectively intolerant of others. When tripped in these efforts he crys "persecution."

Freedom of speech he believes in, but not outside a pattern favorable to himself. Degenerates! paranoiacs! brutes! he wails concerning those who scrape him off as a bed bug from a living organism. Thus, he insists to the right for his own kind of racial propaganda, while crying down all kinds unfavorable to himself. Yet when useful, [fol. 83] as now, he denies the importance of race although he is the most racially ingrown of all peoples.

The Jew is no pioneer. Nor is he farmer, sailor or mechanic. He has no country; his thinking about other peoples is without distinct boundaries. Detached from the soil, rootless, his individuality dependent on peoples loyal to particular localities, he needs vital people upon which to fasten. Hence, when his methods are typical of a community, self-destruction begins because of the breakdown of the supporting structure upon which he feeds.

He professes to have a horror of bloodshed, while at the same time urging you to crush others. He would pervert the life of the nation, through shedding of your blood in the interests of his own safety. As a middleman, he works

through intermediaries—through, for instance, "our leader," who would make us victims of his infantilism.

Men and women, who believe in decency, rise in protest at our bestiality. If necessary let the protest be long silent, implacable, until America is torn into parts by internal revolution, as retribution for a concealed sadism of which the Jew is a spokesman.

Thereupon the following document was received in evidence as Government's Exhibit 45 and considered by the jury:

GOVERNMENT'S EXHIBIT 45

Roosevelt's Illness

He inoculates us with the poison of a puff adder concerning the victory of the spirit over brute force through the use of bombers. For, alarmed by the revelation of internal weakness of which his illness is symptomatic, he turns with apprehension to look unknowingly at the projection of the image from within, preparing meanwhile to fight it as a "foreign" power.

Let us examine his illness in a clinical manner.

Infantile Paralysis occurs most frequently in weak and delicate young children, especially during the period of first dentition. The primary effects are on the spinal cord, but widespread pathological changes may be produced in other parts of the body, including the brain.*

Aside from the physical handicap, an understanding of psychological reactions to a deformity are important for an insight into our leader's condition:

[fol. 84] 1. As a result of long periods of hospitalization, the idea of becoming a doctor or nurse is more common and persists longer than is usual.

2. The infirm are inclined to expect the outside world to give them the same special consideration which they received while dependent on others.**

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*See the article in the *Encyclopaedia Medica* (2d ed.), VII, pp. 285-90.

**From a report of the "Rehabilitation Session" of the Illinois Vocational Association, Rockford, Illinois, (March, 1941).

3. Seriously abnormal distortions of personality may develop, as a compensation for the stultifying effects of a handicap, through the construction of "an internal world of phantasy."***

The restriction of usual outlets for acting on the world results in a narrowing of the environment accompanied by apprehension, suspicion of the environment as being alien, and a negative self-feeling from which may develop a full-blown delusion.

4. Because illness has crushed so many ambitions, the handicapped frequently hope that they will be able to compensate for their limitations by outstanding vocational achievements.

It is well to work with such cases as early as possible, since by doing, "the more obvious and impossible aspirations can be nipped."

A more significant insight is now obtainable concerning our leader's objectives: He would make himself a healer, a wet nurse for the world—excepting, of course, opponents whom he regards as "copperheads."

The specter with which he engages in combat as alien is the gargantuesque image of disruption within. For the restriction of the usual outlet for his energies as a result of his personal catastrophe results in a narrowing of his field of action, apprehension and negative self-feeling. When carried into foreign affairs such reactions to his ailment are expressed as fear of change in the *status quo*, phantasies concerning invasion, and the attribution of the negative self-feeling to the "bad dictators."

He now diverts attention away from his infirmity by "defense reactions." Unless restrained by, say, those who recognize the symptoms, such "defensive" work may take the whole nation into war. For what would better serve the purpose than to play the role of warrior—the center of [fol. 85] attention as commander of ships, planes and millions of soldiers.

Thus, in connection with chats concerning "civilization, humanity and freedom," our leader is making steady progress toward curing himself by turning the whole nation into

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***From an Introduction To Social Psychology by L. L. Bernard, (New York, 1926), p. 197.

a sanitarius of which most of the population are inmates, with the patient himself as nurse.

Thereupon the following document was received in evidence as Government's Exhibit 46, and considered by the jury:

GOVERNMENT'S EXHIBIT 46

Roosevelt's Infantile Paralysis

Americans have the uneasy feeling that all is not well; they suffer from the threat of a hidden danger. It is the prompting of a sick conscience: suppressed fear of retribution for a former blood soaked boom. Let us, therefore, investigate the ailment of him who urges us in fireside chats to repeat the sordid work.

The disease.

Infantile paralysis is an acute infectious disease, usually affecting children. It may spread, some epidemics having almost circled the globe.

The agent has not been isolated, but it is believed to be an infiltrating virus which acts in some ways like the virus of mad dogs (hydrophobia).

Changes in the spinal cord upon which it operates are those of an acute inflammation. A partial or complete destruction of nerve structures of the cord results. In some patients the infection progresses into parts of the midbrain and brain itself, tissues of which are destroyed.*

Thwarted activity.

The brain responds to the activity of the entire body: a sound brain needs a healthy body. A cutting off of the usual stimulus from some of the limbs by paralysis disturbs the balance maintained in the brain, in connection with ideas constructed concerning the outside world. A searching by the brain in stimulus from the injured nervous system for the cause of the lost harmony occurs. The numbed body may then excite the brain to inflict punishment on others for suffering which came to it silently from an ex- [fol. 86] ternal source. When the search for the cause enters into a larger sphere of ideas, it then becomes easy

* See the article by S. E. Geliffe, M.D., *Encyclopedia Americana* (1940), Vol. 22, p. 304.

to give a human basis to the affliction by attributing it to some foe abroad. Such a one might well be Russia; but better yet Germany.

Fear of the ghetto.

Although a continent lies before us for development the shout goes up—as if fearful of being confined to a sick bed—"we must not be isolated." Alas, where are the pioneers?

As those who have over-stimulated brains and a weak supporting structure need vital people to fasten upon, "our leader" would now impose his thwarted physical nature on others. Unable to find a cure for the depression within, nor maintain a stable state except as it is built on the suffering of others, people living abroad whom we do not understand are a convenient medium for the parasitism.

Limiting the strength of others.

Craving sympathy, he would put America onto a wheel chair whereon all may have fireside chats on equal terms. As compensation for his handicap he would bring the world to the invalid as a visitor to a warrior. Yea, he would reduce Americans—as well as others abroad—to a condition of helplessness such that the sick may control them.

Unable to defend himself adequately in the physical presence of an enemy, he now supports his spinelessness with mountains of munitions. Unlikely to thrive in a more virile world, he uses the vital in the interests of the decadent, to bring himself back to health. He would make himself safe by building his limitations into the world.

Duplicity.

Formerly he talked about an abhorrence of brute force; now of being an arsenal for Britain, and an invasion of foreign ideas. He is as a ventriloquist's dummy for islanders who, with monocle and affected accent, are laughable specimens of a departed age. Behind him stands Morgenthau—representative of the holy people—insinuating ideas of a decadent race: he would have you save Jerusalem.

Without the forthrightness of dictators, whose ways he apes, he gives off drool concerning invasion. Lacking re-

spect in your ability to govern yourselves, his promises are a rattle, not of warning but of deception. While appealing [fol. 87] to your sentiments with fireside chats concerning humanity, you are inoculated with ideas induced by fear concerning defense by offense—a shameful exhibition of duplicity, an insult to your status as men.

Lurking behind sweet phrases is a lust to counteract effects of his incapacity by violent methods. He is ready to engage in mass murder with the flimsiest pretexts in order to bring himself—and those whose illness he represents—back to health. Afraid of outright slaughter he would—put others out in front to do it for him. He has indeed no objection to crushing others if effected indirectly as, say, an arsenal for Britain. Nor is he shocked by a coward's blow such as that of the islanders after they saw Germany engaged in 1914 on the east by Russia, on the west by France—provided it is struck by our "protectors."

Internal stress.

Beliefs concerning peoples against whom "our leader" would make war are a reaction against internal weakness from which he looks away. Sickened by years of following an internal policy of least resistance, he insists as a cure for our jitters upon the maintenance abroad of the *status quo*. Blaming our debility on others abroad—of whose contributions to music, philosophy and science he is only vaguely aware—our energies are whipped up by the prospect of another blood soaked boom, made respectable by unctious phrases about humanity. Expansion having ceased within, movement is involuntarily out: we march toward war. It is to supply the shock to cure the innervation within, as well as the opiate to relieve the pain of decay.

Undeclared war to aid the islanders is war against America. But hypnotized by phrases, we are led toward war.

The public opinion which incited an expedition in 1917 is one of the foulest examples of brutality and self-delusion of which there is any record. Our hero—safe in Washington as before—would repeat the disgusting work.

Thereupon the following document was received in evidence as Government's Exhibit 47, and considered by the jury:

[fol. 88] GOVERNMENT'S EXHIBIT 47

The Condition of Our Leader

He fears the "isolation" of the pioneer; the independence of people able to stand alone.

As with those who have a compulsion neurosis, he induces conditions whereby the invasion he fears will be made certain. Sterile of ideas he follows a line of least resistance by copying the pattern of totalitarian states, at the same time denouncing their originators as "bad men." But his susceptibility to external influences also makes him incapable of resisting the European matrix of war, of which his plans are a copy. It is this which defines the *compulsion* of his *neurosis*.

The Bedside Cabinet.

Indicative of the forthcoming collapse of the islanders is the lily whiteness of their "horror of aggression." At the same time the setting for internal convulsions is being prepared in America by the obvious brutishness of being, as being, an arsenal for a degenerate empire.

Isolated as enemies of mankind because of the self-righteous duplicity of saving ourselves by saving our "protector," peoples within America may turn against those who further the growth of internal strife. As the drive against the enemy within continues, a bedside cabinet may be appointed to investigate the ailment of Franklin.

The Hero.

Enormous is the lie and hypocrisy of "our leader"; grand is the opportunity for quacking about the "bad dictators"; pitiful are his dupes. Enormous have been the aggressions of our "protector," and diseased is the memory which fails to recall the indecency of our first blood soaked boom. But we are victims of an infantilism.

Sheltered as a child, he is a playboy who would play at soldiers. Safe in Washington (as before), he wants to be a hero—strong, dashing, with the youth of America at his call.

Forward then with the plowing under program; onward to the wars.

Thereupon the following document was received in evidence as Government's Exhibit 60, and considered by the jury:

GOVERNMENT'S EXHIBIT 60

Revolution Will Come to America

"Whom the gods would destroy they first make blind."

The rat is out of the bag. The English are now letting [fol. 89] down their hair; they call for help. Brutal, sterile, with the latent cowardice of the bully, the incredible duffers, after making two tail-between-the-leg retreats described as victories, have at last been pushed back onto their hind end on their island.

Unable to organize the continent of Europe after the massed brutality of the world defeated the central powers in 1918—Europe, after its butchery through the boobery and sterility of Allied "Statesmen," began to collapse under the dual weight of an ominous thrust of semi-asiatic Russia, and the massed tyranny of the "democracies," tolerant only within their limited perspectives. Bloated with their boodle, the English now squeal about aggression, and by the frequent repetition of a lie seek to inculcate the belief that they are the spokesmen of God, Christ and civilization themselves.

Twice they were pushed from this land—first in 1776 and again in 1814. But in 1914 we succumbed to a blood soaked boom which finally sent us to their aid across the Atlantic screaming about democracy and civilization. Our right to be an arsenal—a minister of death for Europe—had been interfered with.

But Europe and the West cannot survive another allied "victory" obtained at the expense of America, milk cow for a nation now sinking to the rank of a second rate power. For, as the allies are no longer self-supporting spiritually or financially, degeneration of institutions of the west would set in at an even faster pace. Nor can America long survive another campaign of race hate, witch hunting and the barbarism of another blood soaked boom, made respectable by unctuous phrases about humanity.

Prior to 1914, Russia with its vast territory moved eastward toward the Pacific until it was halted by the Japanese; it also pushed slowly westward into Europe by way of

the Balkans. Thus when Russia mobilized in 1914, Germany, sensitive to pressure from Asia, was confronted on the east by a Russia whose cossacks were expected to come thundering off the plains of Eurasia; and on the west by a France thirsting for revenge for the defeat of 1870. The fighting forces were already weighted against Germany. The time had come at last for the English, safe on their island, to try to destroy a strong rival, for, as the science based on centuries old work of all Europe spread to the peripheries of the world, they met an increasing competition for markets. Then like a coward they struck their [fol. 90] foe in the back, screaming hysterically meanwhile about Belgium. But stupefied by the loot of centuries, they failed to realize that weakening of a vital state such as Germany—from which they as the remainder of the world drew ideas for sustenance—would lead to the distintegration of Europe and the eventual collapse of their bloated domain.

In guarding the loot and pillage of centuries the islanders failed to bring about needed adjustments to a new age. Having acquired much of their territory by force—sustained by drawing on the cultural heritage of Europe—they now claim to be *the* representative of humanity—yea, the sanctuary of peace and freedom themselves. But when a nation attempts to hog the earth (and the sea as well) dislocations are produced which result in wars then stigmatized as aggression. Such a nation now prefers to absorb its victims slowly through the steady pressure of the semi-inert masses of former conquestions. Thus, resistance to change in the *status quo*, with the finger of guilt pointed at others, is "natural" for one gorged with territory yet to be digested. It is also natural considering its limited contribution to the culture of all Europe which it now claims as its own—that its Christianity is that of an overfed snake. The sickly screams about civilization which emanate from the stupefied islanders is, in fact, indicative of a diseased ego accompanied by an outflow of pus. Having fought for such a holy cause, even the most gullible democrat should be troubled by the inner state of affairs when, with sheeny-like cunning the islanders further extended their domain under cover of mandates, while at the same time helping to butcher Europe into a crazy quilt of buffer states—an incredible lack of understanding for a people who claim to be experts concerning

freedom (excepting, of course, for Ireland, India, the seas, and so on *ad nausea.*)

Europe packed into pieces, separated by economic frontiers, barriers of race and language, was endangered by the continued poverty of large sections of its population, as well as by the sterility and lack of leadership of the Allies. It was also faced on the east by the semi-asiatic peoples of Russia coming to consciousness of the science of the west; while at a gateway of Europe the islanders sought to sustain the semi-inert mass of their domains by turning the resources of the world in warfare against Europe, homeland of the west. Hence stern measures had [fol. 91] to be taken if the further degradation of the continent of Europe was to be prevented; its eventual overrunning by the masses of Asia prevented; and the diseased bungling of the "democracies" overcome—if, that is, the foundations of Europe, running deep into the centuries, were to be sustained.

Thus, the Germans—a people with a distinguished history who witnessed in 1914 the lust for blood of the peoples of the world, heard the arguments advanced for the invasion of Europe, and at a subsequent time witnessed the hypocrisy and falsity of expressed motives—have again risen to resist the brutalization and the impoverishment of the heritage of the west.

As a result the bloody bleeders who expected to bring the white death of starvation and the demoralization of revolution to others have been pushed back onto their hind legs on their island. After promising aid to Poland which never came, helping demoralize the Czechs, crying bravo the Finns, and trying to pit Russia against Germany, they are now running for holes in the ground—appealing meanwhile for help.

America's war psychosis helped to prevent a more stable resolution of world forces in the first world war: our entry prolonged the conflict, prevented a negotiated peace, and accentuated world revolution. Are we again to help bring disaster by obstructing the trend of world history?

Bequeathed modern science by Europe, after ten years of floundering we are still unable to get vital incentives to produce other than those engendered by mass hysteria (pep talks, shots in the arm) concerning invasion. Yet our real fear is of rival ideas, of the strain of adjustment to a new order, or the surrender of license, of competition

for markets (you would stifle the livelihood of others even though a continent lies before you for development), and above all a fear of retribution for a blood soaked boom. At the same time other dangers go unrecognized such as the cockney peril of White's Benedict Arnold Committee which would have us help cocknefy the world. Nor do you realize that degeneration would set in at an even faster pace with another allied "victory."

Isolation is a weasel word in the mouths of the cunning: no one thinks we are cut off from the remainder of the world. Do we not quiver in fear from even the invasion of ideas? And this is, you say, the land of the free and [fol. 92] the home of the brave. Craven ones—is your conscience bad? Perhaps you will soon shiver at your shadow. It is indeed a fatuous doctrine that we are qualified to interfere in European wars, after lying ten years prostrate, unable to manage our own affairs. Is it true we can only be enlivened by the prospect of another blood soaked boom?

Defense by offense: all possible aid short of war? Then you bring war to yourself. If you believe in fair play—if our frontiers are on the Rhine, then you will not object if Europe's are on the Hudson. And the Monroe Doctrine—you believe in it? What you mean is, we will invade the territory of others if convenient—but you, bad men, stay away from this fair land.

But there are terrible penalties for cowardice and brutality. You will not escape the consequences of your greed by sending airplanes. When respect for your integrity is gone, and the subterfuge of protection on the territory of others becomes prevalent, you will be an easy game for the invader. Even now you shiver at foreign ideas.

Americans—you are again being made prostitutes to a foreign power; by refugees and Jews for whom democracy means saving Jerusalem; by America secondists—whose pappies were born in England, and their sympathizers; by professors with inhibitions which go with a sedentary life and a suppressed lust for blood; by public men who divert attention from social deterioration within by engendering hysteria concerning foes abroad; by Roosevelt who would compensate for the inferiority of a crippled body by war against a vital people; and by Morganthau, representative of the holy people, who, to save Jerusalem, like a spider in a financial web would sell your birthright by

the manipulation of a stabilization fund and the granting of credits to a decadent empire.

Docile Americans—impelled toward your own subjugation—throw off your hypnosis! Stop whining about your "protectors," the English. Twice they were expelled; again they return, this time to appeal to your cowardice to save them from their degeneracy.

Free men—turn with disgust from the claim they are the sanctuary of freedom: full of the cockney they are like a cock crowing over an egg it thinks its own. Only by an enormous falsification can it be said that democracy is theirs. Even the gullible should realize by now that the stand by the Germans in the first world war against the tyranny of the masses of the world brought partial free-[fol. 93] dom to Ireland, the overthrow of the Romanoffs, and the lifting in the calculable future of the yoke from India.

A merging of our interests with the islanders (union now) is indeed a disgusting prospect: with the resistance to change which goes with vast bulk and old age, the dead weight of a now sterile empire is an obstruction to a more honorable world: a foreign body in a living organism.

Specialists in rear guard action (even in Libya they marched behind the Greeks)—they will desert you, as others, at an opportune time. Unwilling to meet in equal combat, they would destroy the unity of others, shrieking "aggressor" while doing so, if measure of self-protection are taken. Asking license for themselves while at the same time decrying the discipline of others as regimentation, their plea for help is that of the parasite and the sadist who fears retribution—not as they would have you believe—the voice of God.

Is this then to be a puppet state with a creed of hate. Can you be put again to the shameful use of an arsenal for a foreign power whose wars you do not declare or booty share? Are you as before to pour money into the maw of the British empire as into a rat hole, to sustain a decadent empire to which huge gifts have already been made by purchases of gold at an abnormal price?

Can you continue to strike at groups whose forefathers lived in warring countries without growing internal difficulties? Pious hope that the islanders' wars can be made our wars! A breach in American unity through the sup-

port of that special group will come. "Fifth columnists" as a result of the need to throw off the cockney menace will grow apace. Defence against White's Mass Murder Committee by all means short of civil war is on the way.

Americans, your vaunted free speech is already giving way to alarm concerning foreign ideas. Your internal collapse is viewed as an assault by others. Democracy is becoming a weasel word, a decoy duck for the retention of illicit gains: you would extend your license, not your liberty.

The American king of 'ogpu has a sweet name but it stinks nonetheless: to speak in the name of the Intelligence Service only makes the stuff more palatable. When given such a sugar coating it can be shoved down your throats with fewer wry faces: it may even be swallowed with gusto if a hand is raised in a salute to freedom. (Freedom to do as you please; not too proud to fight for the empire, etc.) [fol. 94] Your promises are worthless outside a restricted circle of ideas which no longer meet the world situation. Repudiation of debts, betrayal of others (Poles and Czechs), the progressive breaking down of respect for law by changing or evading them as soon as they are inconvenient (of which your repudiation of the Hague Convention of 1907 is an example), and the scuttling of solemn acts of congress by subterfuges of leaders whose promises you no longer take seriously, are indicative of your demoralization. Their infantile paralysis now spreads through your body, numbing the limbs and exciting the brain to inflict punishment on others for a deprivation of health for which they blame others.

The story told of the German people is one of badness, but the judgment to come of a people able to swallow such a dose will be one of degeneracy induced by the impact of ideas to which they were subjected in the guise of holy names.

The most vicious—and as to results the most brutal—persecutor of peoples is in fact the Jew. With a continuous scream his spokesmen now pour out streams of information infected with the distortion of his disgusting limitations. It is naive to expect that his fangs will not be pulled because attention is called to his "holiness."

Your freedom is a particular kind obtained by definition at the expense of others, by limitation of insight, for

ulterior purposes. Your output of information concerning the world situation is as before particularly vicious. Assassination of character is to many of your intellectuals as nothing, although they turn away with horror, so they think, at bloodshed.

You know by now that the freedom for which you fought was an illusion: Freedom to influence others through monetary channels, discriminative tariffs, blacklists, control of the seas, bottlenecks such as Gibraltar, and the blocking off of large thinly populated areas such as Canada; freedom for an international hog with the latent cowardice of the bully to bring the white death of starvation by blockade, to protect himself on other's territory, to betray small nations, to milk the hind state, America, and pollute the world's life stream by whining about Christianity.

And the source of infection for discriminations of race: Do you not by now know its source?

Men and women who do not believe in the brutalized [fols. 95-122] supremacy of force, mere size, material goods—turn with horror from the spectacle of the hog on land and sea claiming it is fight-for God, Christ and civilization.

Docile Americans, put aside your sanctimonious gush—your hysterical gabble about invasion—your cowardly fear lest limits are put to your greed.

You, successors to a blood soaked boom, enough of the falsity of your injured innocence. Do you not still believe in the victory of ideas and courage over massed brutality; do you not still believe in fair play? Arise then—be Americans. Let the island hog—gorged with the loot of centuries, sustained by the blood of adversaries sucked by an alliance with Jewdo*n*—collapse of its own weight.

There is no choice as you are taught between appeasement and war. The trend of events has long been out of control of your allies. You now have only the choice, as time will tell, of increased stability and safety for the West by a German victory, alternatively, of an accentuated world revolution which finally will swallow up the islanders, and with them America.

By an American who believed in the postulates upon which the nation was founded.

MOTION FOR DIRECTED VERDICT

And Thereupon at the close of the Government's case in chief the defendant, Elmer Hartzel, moved the Court to direct and instruct the jury to find the defendant, Elmer Hartzel, not guilty; but the Court overruled and denied said motion, to which ruling of the Court the said defendant excepted.

And Thereupon the defendants, to maintain the issues on their behalf, introduced the following evidence and the following proceedings were had:

* * * * * * *

[fol. 123] ELMER HARTZEL, one of the defendants herein, called as a witness on his own behalf, having been previously sworn, testified as follows:

Direct examination.

By Mr. Rankin:

My name is Elmer Hartzel. I reside at 21 West 110th Street, Chicago, Illinois. I am 51 years old and was born September 9, 1891, at Newcastle, Pennsylvania. My father's name was William Hartzel and my mother's name was Fannie Warnecke. My father and mother were both born on farms near Newcastle, Pennsylvania. Their parents were born in Kingston, Pennsylvania. My people have resided in this country since 1820. I received my early education at Grove City Preparatory School, Newcastle, Pennsylvania. I was born in the city of Newcastle and not on a farm. My father was a wholesale dealer in butter and eggs. I finished three years of preparatory school and then after a period of years entered college at Akron, Ohio, and graduated from there with the degree of Bachelor of Science in 1923. I started to work about 1909 in Pittsburgh, Pennsylvania, with my father and I was with him until 1915 when I went to work at the railroad yards. I wanted to be a railroader and at the time of the outbreak of war in 1917 I was working for the Pennsylvania Railroad as a switchman. I was then in Youngstown but went to Pittsburgh about the time of the outbreak of the war. I called up the Marines and asked if I could get immediate service abroad. I didn't get into service with the Marines. I heard that the Uni-

[fol. 124] versity of Pittsburgh was forming a unit to go abroad and I applied there. They did not have a full quota and I was accepted in May 1917. My number was 10,500. I went over seas in September 1917 and landed in England. Between May and September we were at Allentown, Pennsylvania, awaiting shipping orders and taking training. We were sent to England and I was in service overseas for 18 months and returned to this country in April 1919. I was honorably discharged April 1, 1919. I saw service in the Medical Corps at Angers where I did X-ray work. I was a candidate for the Artillery School there but the war ended before I was accepted. After I was mustered out of service I went on a short vacation and went to Akron, Ohio, and worked for the Goodyear Tire and Rubber Company. I was in the production control department and saw that material flowed through the factory in an orderly manner and in the quantities they wanted. I left there and went to work for the Akron Health Department and received permission from Dr. Nesbitt of the Department to do college work and entered the University of Akron. I was with the health department until the depression came at which time they left off the youngest member of the staff, which was myself. I was with the Health Department about two years. I graduated from the University of Akron with the degree of Bachelor of Science in September 1923. I then went to Chicago and entered the University of Chicago where I took under-graduate work and was at this University until the end of 1926. I majored chiefly in economics, and Political Economy. I did not receive a degree. After I finished at the University of Chicago I went to work for the National Bank of the Republic, at Chicago where I was employed as financial statistician, that is a statistical man and investment adviser to the bank which later became merged with the City National Bank and Trust Company. I was there until the end of 1927 when I went to New York to get some additional financial training. I was employed there by the Fitch Company, a publishing company and financial analysts which compiled financial reports for the Analyst. I was there five months but came back to Chicago because I had left a girl behind me. The girl is now my wife and is here in the court room. When I returned to Chicago where I wrote articles for the Chicago Journal of Commerce

for a magazine they publish called The Economist. After [fol. 125] that I obtained employment with the Kissell Company, an investment banking firm which had its main office in New York City. This was in September 1928 and I remained with them through the financial crash and until the end of January 1931 at which time their Chicago office was closed. Not being able to obtain satisfactory employment, I stayed home writing periodical articles which I subsequently published. I later obtained work with the Department of Mines and Minerals of the State of Illinois but due to the economy program, that job was legislated out. I then obtained employment with the Fernandi Company, investment brokers in Springfield, Illinois. That firm was dissolved and I returned to Chicago early in 1934. From 1934 until 1936 I worked at various jobs including one with the Cook County Bureau of Public Welfare, doing statistical work there at the stockyard station. I also worked for the University of Chicago in their library. Having received a bonus from the United States Government because of war service, I did part time work in the Department of Philosophy at the University of Chicago. I majored in philosophy and science. I also worked for Enyard, VanCamp, an investment company on LaSalle Street where I was assistant to the partner. He wanted some financial assistance in order to float some stocks and bonds. This firm was a partnership and was partly dissolved, at which time I left them. This brings us down to 1938. During the interim I passed several federal and state examinations—civil service examinations and took work in the Division of Unemployment Compensation of the State of Illinois doing statistical and auditing work. They were located in the Merchandise Mart. During this period I did a lot of research work some of which was published and some of which was not. For instance, I wrote one for the Harvard Business Review, one for Time in 1935, one for the University of Chicago which was published in the Journal of Business. I did two articles for the Accountant's Review, published by the Association of University Accountants and I wrote an article for the University of Southern California. I had passed numerous civil service examinations given by the Federal Government for work as a financial economist and other work of that character and was on the list for assignment. In 1941 I was called for work

in the auditing section of the United States Army Air Corps in the civilian branch. I didn't apply for that work [fol. 126] but they called me for it because of the emergency and I was assigned to Detroit, Michigan, to work in the Packard Plant which I did until November, 1941, when I returned to Chicago to do personnel work at the Buick Motor Plant in Chicago. I did auditing the same as at the Packard plant in Detroit to see that costs were kept according to required accounting procedures. There was a personnel of 5000 employees. In February 1942, because of a change in the regulations regarding account work some of the personnel was removed from the Buick plant and I was assigned to the Pullman Car Manufacturing Co. located at 103rd Street in South Chicago where I did the same kind of work, that is auditing the books of the company, verifying the accuracy of the records, etc. I remained there until my incarceration on September 6, 1942. I was arrested at 1:00 o'clock on Sunday at my residence at 21 West 110th Street, Chicago, Illinois. I had lived there about four months. I left some of my personal belongings at 149 South 14th Street in Maywood because I could not obtain satisfactory quarters. We were only able to obtain a one-room apartment so we left several trunks and a number of boxes with our friend, the man who testified here.

I also wrote some articles concerning the candidacy of T. P. Smith who was then running for Congressman at Large in 1940. There were about 200 copies of the article which were sent chiefly to newspapers downstate. I wrote another article called "Revolution will come to America" in January 1941 and about 200 copies of that were sent to some newspapers and others. I wrote the article "The President's Illness" in April or May of 1941. I had 200 copies mimeographed and sent them to a number of representative people. I had a mailing list which I first began to compile when I thought I saw war coming and that is the time I wrote "Revolution will come to America." I obtained the names of some prominent people and newspapers and others whom I thought might help keep the war from coming here. I finally had a mailing list of 750 names. But at no time were more than 600 documents sent out. They were chiefly sent to prominent people and a large portion of them were sent to Congressmen and other representatives, and some at least were sent

to senators. The type of people who oppeared on my mailing list ordinarily were prominent, representative people. As time passed, I began to eliminate a number of [fol. 127] representatives and senators. Out of the almanac I obtained names of patriotic societies such as Daughters of the Revolution, We the Mothers Mobilize, in short a list of which I considered to be patriotic organizations. That includes the names of fraternities, sororities and organizations of that type and the Natoinal Committee of America First and also Frank J. Loesch, the man whose name was mentioned here and a number of bishops and representatives of churches.

I first met Mr. Soller in May of 1941 at 800 West North Avenue on the second floor. He was associated at that time with Mr. Hahns Reichel who ran a foreign travel agency. The people who had been doing my work had not been doing satisfactory work and one of them had gone out of business. I wanted someone to do my work who would be near my place of employment in the Merchandise Mart. I read in the paper about the German-American Alliance which I thought was a kind of trade organization and which I thought would be opposed to Communism and who might be opposed at that time to war against Germany. We were not in war then and I went to the German-American Alliance and asked if they knew of someone who could do competent work and they referred me to Mr. Soller, having received some of his advertising material. This was in May 1941. I went to see Mr. Soller immediately. I did not, at that time, have any articles to be mimeographed. I merely asked if he would be in a position to do some work for me. I next saw him a couple of weeks later between then and July 15, when I left for Detroit. The first piece of work he did for me was in May 1941 and was called: "The President's Illness." I received it and paid the usual rate. The next article was done in September 1941. I called him from Detroit and said I would send him a manuscript, which I did. That article was called "The Blood Sacrifice" and it was delivered to me by express and paid for at the usual rate. The next article was in May 1942 after I had returned to Chicago. There were two articles. One concerned the British and one concerned Jewry. "The British an Inferior Breed" is the one I refer to and the other was "The Jew Makes a Sacrifice: The Forthcoming Collapse of America." They were short

and intended to be complementary to each other and to go out in one mailing. I received the finished work three or four days after I mailed the manuscript and sent copies [fol. 128] to the people described in my mailing list. I sent out about 600 copies and addressed the envelopes myself on a typewriter I had purchased and which was shown here. I paid for the stamps. Mr. Soller did another article in July or August of 1942 called: "The Diseased Spinal Cord," the title of which was worse than the contents. I received that work from Mr. Soller at the corner of the public library at Randolph and Michigan Avenue. He gave me the material and I gave him the usual payment. I had previously made arrangements with him to meet me there. I could not very well make the trip from the south side to his office. I had moved to the south side and it was more convenient for me to meet him at that place because of the connections between the elevated and the Illinois Central at that point. The amount of the bill was $7.00 which I paid. I had a conversation with Mr. Soller. He asked me what I was doing at the library and I told him it was for my convenience. He also asked me what I was doing with this material and I told him I was mailing it to Congressmen and Representatives including Brooks, Green and other men of that type.

Mr. Rankin: Mr. Hartzel, you have been charged here in the indictment in this case with having unlawfully, wilfully, knowingly and feloniously obstructed the recruiting and enlistment in the service of the United States, by sending out this document called, "The British an Inferior Breed," with the intention to induce persons available and eligible for recruiting and enlistment in the military and naval forces of the United States to fail and refuse to enlist for service and to induce such persons liable for military and naval service of the United States under the provisions of the Selective Service and Training Act to refuse to submit to registration and selection for said service provided by the law; I will ask you, did you have—in the mailing out of those articles and in constructing them, did you have any such intention?

Mr. Hartzel: No, sir, I never did. I have been in the service myself, and I thought it might improve their morale, or indirectly that of the public at large.

Mr. Rankin: You are charged in Count 2 of the indictment with unlawfully, knowingly, wilfully and feloniously causing and attempting to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, by sending out those articles, intending to cause insubordination, disloyalty and mutiny, [fol. 129] and refusal to do duty in the military and naval forces of the United States, to the injury of the United States; I will ask you if you had any such intention in mailing out those articles?

Mr. Hartzel: No, I had never conceived it in that way; my efforts, I thought, were political in character.

Mr. Rankin: You are likewise charged with sending out articles, this article, "The Jew makes a Sacrifice: The Forthcoming Collapse of America" and ask you whether or not you had any such intention as was charged in the first and second count here in sending out those articles?

Mr. Hartzel: No, sir, as an American I did not.

Mr. Rankin: And the same that I have mentioned that was charged in the first and second are charged in the third and fourth, and your answer would apply to the third and fourth count under the same circumstances?

Mr. Hartzel: Yes, sir.

Mr. Rankin: Now, the fifth count—what was the name of that?

Mr. Connor: "The Diseased Spinal Cord."

Mr. Rankin: In count 5 and in count 6, you are likewise charged with sending out an article called "The Diseased Spinal Cord." Now, I will ask you whether or not you had any such intention in sending out that article as I have asked you here?

Mr. Hartzel: I certainly did not.

Mr. Rankin: Will you state to the court and jury what was your intention then in writing and distributing those articles?

Mr. Hartzel: I always regard my work as from a statistical standpoint and business, and also taking the war aspect, I thought there was a trend toward Communism, and I thought it was quite a dangerous position because of warfare between the white races, it would be the cause of war between the white and yellow races, and rather than have it beat into us, we might as well face the facts and know what we were facing, a certain group of Communists discussing methods, their viewpoints, I wanted to help minimize that

so we could again have public standpoint established in this country. I am not in here because I was disloyal, and I have no prison record, but because the Communistic question is beginning to get in here and will cause the disappearance of this court, and the absorption of the executive branches [fol. 130] otherwise of the government, the disappearance of the things that I was trying to work toward.

Mr. Rankin: You are charged with having conspired in this matter with Mr. Newell Mecartney and with Mr. Elmer Soller unlawfully, wilfully, and knowingly, feloniously, combining and confederating, agreed together with each other or with other persons to this grand jury known, to violate the provisions of Section 33, Title 50 of the United States Code, to commit certain offenses wilfully, by causing and attempting to cause insubordination, disloyalty, mutiny, refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States, by preparing, publishing and circulating these documents, distributing and disseminating them in the Northern District of Illinois and elsewhere throughout the United States, various documents, like the articles which are mentioned and specified in the other counts, and causing or attempting to cause insubordination, disloyalty, mutiny, refusal of duty in the military and naval forces of the United States, the United States being at war, to wilfully, obstruct the recruiting and enlistment in the service of the United States, by preparing and publishing these articles and documents aforesaid, and intending to induce persons available and eligible for recruiting and enlistment in the military and naval forces of the United States to fail and refuse to enlist for service therein, and inducing persons who would be liable for military and naval service in the United States under the provisions of an Act of Congress not to enlist, or to destroy or injure the military services; I will ask you, did you have any such conspiracy or arrangement or agreement with Mr. Soller or Mr. Mecartney, or any other person?

Mr. Hartzel: I did not. I was completely alone. Not Mr. Mecartney and not Mr. Soller—if I would have had a typewriter myself, I would never have contacted even Mr. Soller.

Let me say parenthetically that what you see here in the exhibits indicated here that I was spending most of my time at such work which is untrue because I was fully

employed and only a small part of my time was in this endeavor, and I listened to none of those foreign broadcasts. I read a book written by a college professor concerning anti-Semitism, a book by Professor Coffin, concerning "Perish the Germans," in which he advocated that [fol. 131] seventy million Germans should be exterminated, and be sterilized. But to go back to the question, I was completely alone and wanted to be.

Cross-examination.

By Mr. Connor:

Regarding my first contact with Mr. Soller I went to the German-American National Alliance for reference to someone to do my mimeographing work because the people who had been doing my work were not doing first-class work, one of them had gone into war work and as I was working in the Merchandise Mart, I wanted someone nearby to do the work for me. It so happens that 800 West North Avenue is not very far from the Merchandise Mart and you can go there on the elevated in three or four minutes. I had another purpose. I wanted to get somebody—we were not at war then, who might be non-communist and opposed to the trend toward communism. I had no intent to do anything or any of the things charged in the indictment or to undermine the morale of the armed forces. I sent the documents out anonymously because I almost lost my job several times and I knew I had to be careful and also because of a great deal of espionage in the community. I did not sign my name to the documents I sent out for the same reason. When I wrote in the Harvard Business Review, the Chicago Review and the Chicago University Review I signed my name. I wanted to get my mimeographing done closer to my work but I telephoned him from Detroit because I knew the man did careful work and he knew what I wanted. As I explained before, in addition, I wanted someone who would be adverse to war with Germany, we not being at war at the time and who might be opposed to the trend toward Communism within America. I never inquired as to Mr. Soller's attitude on this point. Regarding the articles charged in the indictment, those were mailed in Chicago. I took them out and dropped them in several boxes. I did that because with such a large quantity of them, I thought someone might

throw them out. I mailed them all at once, but I dropped one hundred in one box and another hundred in each of four or five boxes. I didn't put them all in one box simply because, if someone would throw one out they would throw them all out. I had a suspicion that someone in authority might well find these articles and throw them out for the reasons I gave you. I had heard that fingerprints would [fol. 132] be identified so I put my hand over it like that (indicating). I was suspicious of it for the same reasons I gave you. I did not try to smudge the fingerprints, I merely put my hand like that as I have shown you. The purpose of mailing these documents was not to improve the morale of the troops. I have read the last six paragraphs on page 2 of Government's Exhibit 21A and I think this, insofar as effect on the morale of the troops is concerned, that the troops ought to know, and the country also, and the country at large, the consequences of war. I think the effect on the troops of saying that America was betrayed would be for them to consider whether it was or not and if so, to fight for Americans. I think America was betrayed by Jews within America who had been delegated to work that up, one was the Jews and the other was the British. I have read the Declaration of Independence and I consider it a mighty document. I am an American.

The sentence "The butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves" referred to a book that told of seventy million Germans to be sterilized. It is a leader's doctrine for Christians. I mean by that, when we acquire and support the objectives of war. I did not mean that if America continued its fight in this war, the miseries and things that would result from war would be back on us, I meant you would have to reconsider the objectives. By "a stench from rotting carcasses of those who would again invade Europe" I meant Americans. I am opposed to Americans and British invading Europe. I am opposed to the objectives that this country has announced: policing others and taking a totalitarian doctrine and applying it to those they condemn. I was opposed to America's entrance into the war.

Redirect examination.

By Mr. Rankin:

I know of many others who were opposed to our entering into the war including very prominent Americans. Colonel Lindbergh is a great American. General Wood and Senator Wheeler are staunch Americans and men whose integrity and Americanism cannot be doubted. After America entered into the war I never did anything to stop or oppose the military service in any way or the operations of the War Department. I never denied to the F. B. I. that I had written these articles or rather, I did not affirm or deny it.

[fol. 133] MARY HARTZEL, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Short:

My name is Mary Hartzel. I live at 21 West 110th Street. I was employed until the trial started but quit because I was ill. The defendant is my husband and we have been married about three years. We live on the second floor at that address and have been there about five months. I don't know anything about the writing of these pamphlets. There is a bathroom at the building right next to our apartment. I saw one of the special agents go up there and take a package from under the bathtub. I knew it was there and saw it when I was cleaning the bathroom. I did not know anything regarding it or when it was put there or by whom. I never found out what was in it and except what I have heard here I don't know what was in it. We formerly lived in Maywood but moved about the 7th of November 1941. I have lived in Chicago twenty years. My husband and I were married in Chicago. I knew him about fifteen years. He has never been in any trouble before, that I know of. We left some of our trunks and some boxes with books and other things in Maywood when we moved to our present address because we have only a one room apartment and did not have room enough for everything. We did not conceal them in any way. All I

know about this case is what I heard in this court room. I never saw Mr. Soller before ths trial. This is the first time I ever have had the experience of being a witness in court.

(Proceedings of January 13, 1943, 10:15 o'clock A. M.)

Thereupon Court and counsel retired to chambers and discussed the type, form and substance of the instructions to be given by the Court to the jury and considered by Court and counsel as necessary and proper under the circumstances.

Thereupon counsel for the defendant Hartzel requested that the Court instruct the jury in substance: that the things alleged in the indictment to have been done by the defendants in the matter of alleged interference with the enlistment and recruiting service and alleged intention to cause insubordination, etc., were not charged against them as being in themselves criminal, but that the defend- [fol. 134] ants were charged with having done those acts with a criminal intent in mind; that the intent charged in all the counts of the indictment is what is known in law as a specific intent which means that the defendant or defendants must have had at the time in question an actual or specific intention in mind to produce the result charged in the indictment; that though the jury may believe that the defendants or some one or more of them did the acts charged in the indictment, still the jury may not find the defendants or any or either of them guilty as charged unless the jury also find that the acts were done with an actual, specific intention in mind to commit the offenses charged in the indictment; and that the jury will not be at liberty to presume that the defendants intended the natural and probable consequences of their acts or of the language used unless the jury also find that such actual, specific intention accompanied said acts.

And thereupon the attorneys for the several parties made their respective arguments to the jury:

INSTRUCTIONS TO JURY

Whereupon the Court instructed the jury as follows:

The Court: Ladies and gentlemen of the jury, it now becomes my duty to instruct you on the law in this case. This indictment——

A Juror: May I ask if it is permissible to take notes on the instructions?

The Court: I will ask counsel.

One of the jurors asked if it is permissible to take notes on my instructions. I would like counsel to step inside and state whether they are agreeable to that.

Mr. Connor: I have no objection.

Mr. Short: I don't care.

Mr. Connor: Do you object to the juror taking notes?

Mr. Powers: Not at all, no.

The Court: Mr. Rankin?

Mr. Rankin: Give him a piece of paper.

Mr. Short: Is there any objection?

Mr. Rankin: I agree to give him a piece of paper, your Honor.

The Court: Give him a piece of paper, then.

Mr. Rankin: All right.

The Court: There is no objection to taking notes, if you wish.

[fol. 135] Ladies and gentlemen of the jury, this indictment is brought under Sections 33 and 34 of Title 50 of the Statutes of the United States.

Now, Section 33 provides that whoever, when the United States is at war, shall wilfully cause or attempt to cause, *willfully cause or attempt to cause* insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States—there are two parts—who shall wilfully obstruct recruiting or enlistment in the services of the United States to the injury of the service of the United States shall be punished.

Then Section 34, I will refer to later.

This indictment, as you have been told, consists of seven counts. Six of the counts are on the particular publication, the first count referring to the publication, "The British An Inferior Breed," says that the defendants caused to be published and disseminated and that they well knew that it was calculated and intended by the defendants to induce certain persons available and eligible for recruiting and enlistment in the military and naval forces of the United States to fail and refuse to enlist for service therein, and to induce persons liable for military and naval service of the United States under the provisions of the said Selective Training and Service Act, as aforesaid, to refuse

to submit to registration and selection for such as aforesaid.

The second count charges publication and dissemination of that document, and says that the defendants then and there well knew said document, writing and article was calculated and intended by the defendants to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, to the injury of the services of the United States, et cetera.

Now, that is the indictment, and as has been stated to you, this indictment is no evidence of guilty and should not be considered by you as any evidence that these defendants are guilty; it is simply a charge that is brought against them, and you are brought here to determine whether the accusations or the charges are just, that is, whether or not the defendants are guilty of the charge; but you are not to assume that they are guilty of the charges simply because they are here, because there is an indictment here and because there is a trial here. These defendants come into court clothed, as the language is commonly used, clothed with the presumption of innocence. [fol. 136] As they stood before you when you were impaneled and sworn to try this case, as they stood there before you, they were presumed to be completely innocent of the charges brought against them, and that presumption should stay with them, with any defendant brought to trial, throughout the trial, unless and until the jurors are convinced by the evidence beyond a reasonable doubt that they are not innocent of the charge and are guilty.

If you can reconcile any doubt in the evidence that has been produced here with the theory of innocence as well as with the theory of guilt, you will so reconcile it with the theory of their innocence and find them innocent, as I said, unless you are convinced beyond a reasonable doubt that they are guilty of the particular charges against them in the indictment. That doubt, of course, as the term implies, must be a reasonable doubt, a doubt founded upon reason and arising from the evidence, the legal evidence in the case, and does not mean mere speculation or conjecture as to some possibility, but, as the term implies, it is a doubt founded upon reason, a reason that you find from the case, the evidence in the case, from the legal evidence given, and unless such doubt does arise, unless the evidence is such

that no such doubt does arise, it will be your duty to return a verdict finding these defendants not guilty.

Now, as I read to you from the indictment, they are charged with causing certain documents to be prepared and disseminated with intent to interfere with the enlistment in the armed services of the United States and recruiting and intending to cause insubordination.

You will determine from all the evidence in the case, first, as to each individual defendant, whether he is guilty of participation in causing the publishing or causing the pamphlets to be published.

If the evidence does not convince you as to any defendant that he participated in the publishing or causing the pamphlets to be published and disseminated, that ends the case as to such defendant, because then there would have to be a finding of not guilty.

Then as to each defendant, you must find these facts before you could return a verdict of guilty: It is charged that these pamphlets were calculated to cause interference with the enlistment and recruiting and were calculated to cause insubordination or disloyalty. If they were calcu- [fol. 137] lated to cause or interfere with enlistment or were calculated to cause insubordination, they would not have to be calculated to cause both, but at least one.

Now, it does not make any difference ordinarily what anyone may think about any race or people. One may be anti-Semetic or may be violently opposed to anti-Semetism, but he has a right to his private opinion. Ordinarily he has a right to express that opinion, and his opinion may be hateful to people, to other people, but he cannot be imprisoned because his opinion happens to be hateful to other people. He may not like the President of the United States, and he may like the President of the United States, and think the President can do no wrong, or he may hate the President of the United States and think the President can do nothing that is right. That is not the question in this case what individual opinions are. There is just this limitation, so far as this case is concerned: One the question of right of free speech with reference to the President or the people in charge of the administration of our affairs, the affairs of war, and that is, they are prohibited by this statute from any expression of opinion calculated, or which would likely have the effect of interferring with recruiting or enlistment or which would cause insubordination in the

army. Now, the two things must concur, and it must appear that the publication was calculated to have that effect, and that the defendant intended it to have that effect.

Now, you are to determine whether the publications were calculated to have that effect from the publication itself, it is for you to determine whether these publications, the language used in these publications, was calculated to have that effect, and then you will have the question of intent. I might say in this connection, I might, in describing the limitations on free speech, I might use the language that was used by Justice Oliver Wendell Holmes: He said: "The question in each case is whether the words used are used under such circumstances or of such a nature as to create clear and present danger that they will bring about the effect that Congress has a right to prevent."

That is the rule that you must apply in determining whether these publications were calculated to have that effect, as to whether the words used in these publications are such, or were used under such circumstances or were of such a nature as to create a clear and present danger that they would interfere with enlistment or recruiting or [fol. 138] would cause insubordination in the army, because then they are prohibited by the statute that I have read to you.

Then there is a question of intent. It is charged in the indictment they were intended to produce those results. In determining whether they were used with that intent, you will take into consideration all of the circumstances in the case, and you must take into consideration the words used, and whether from the words used themselves you could find that there was such intent, and you are at liberty to infer that, to take into consideration the language used, the intention and the probable result of such language used, you are at liberty to infer that from all of the facts and circumstances that you have heard testified to here in the evidence, the circumstances under which they were issued.

There is one other thing that you must consider. Now, another thing which I will refer to just now, some other documents have been admitted in evidence in this case that are not referred to in the indictment, the documents, I believe, that were issued before this war started, before December 8, 1941, and it was not criminal then to publish any such documents even though for any purpose. The statute that I read to you refers to activities when the nation is at

war. Those are admitted in evidence, not as proof that the defendants were guilty of any acts or violation of the statute in publishing them at that time but simply on the question of whether you believe from the fact that they issued such documents and had expressed such opinions at the time when they issued these documents, the documents in question here, mentioned in the indictment, whether, when they issued those documents, they intended to interfere with enlistment and recruiting in the service or cause insubordination or disloyalty to the army.

I might say here, testimony was given as to statements made by Mr. Soller to the F. B. I., and statements made by Mr. Hartzell and statements prepared and made by Mr. Mecartney, referring to the other defendants in the case. Now, what Mr. Hartzell has said outside of court is evidence only against him, and that is not evidence against the people that he talks about or against the other defendants in the case, only as against him.

Statements made by Mr. Mecartney outside of the courtroom in which he mentions the other defendants are not evidence against such other defendants, they can only be [fol. 139] received as evidence against him and be considered as such, if you feel they are evidence against him.

Statements made by Mr. Hartzell about other defendants are not evidence as against those other defendants. However, any statements made by any defendant here on the witness stand about any other defendant in the case may be taken as evidence against such other defendant, if you feel that they are, from all the circumstances in the case, that they are evidence against such other defendants.

In considering the effects of the pamphlets, you may take into consideration, of course, the fact that the nation is at war now and is engaged in recruiting men for the military and naval services and that we have men in the army. I will say to you that it is not necessary to show that any person has been injured by these documents, it is not necessary for the government to show that. The charge is that the defendants published and disseminated these documents with the intent to interfere with enlistment and with an intent to cause insubordination. That is the question for you to determine, not whether any person actually was injured, but whether the publications were issued for that purpose and with that intent and were calculated to have that effect.

When the statute speaks of obstructing enlistment or recruiting, it does not mean preventing, it means that it would hinder or delay recruiting. Obstructing does not mean preventing, as it is used in this statute.

The military force includes all persons designated by statute as subject to be called into active service and does not mean simply a man in the armed services.

That brings me to the conspiracy count of this indictment. I think I have covered everything in my notes that are not on the question of conspiracy. I will ask counsel later on whether there are any matters that I have overlooked, later on in chambers.

In the conspiracy charge, it is charged in this indictment, Count 7, that these defendants conspired together to publish, prepare and publish and disseminate these documents with the intent indicated in the prior counts.

It is not necessary, to constitute a conspiracy, that two or more persons should be together and enter into an explicit and formal agreement for an unlawful scheme, or that they should directly, by word or in writing, state what the alleged unlawful scheme was to be and the details of [fol. 140] the plans by means of which the unlawful combination was to be effected. It is sufficient if two or more persons, in any manner or through any contrivance, come to a mutual understanding to accomplish the common and unlawful design charged.

The members of a conspiracy need not necessarily know all of the other members of the conspiracy. Of course, it is necessary that they should know some of the members of the conspiracy, but they need not know or be acquainted with or have knowledge that other members who are later members of the conspiracy were in the conspiracy.

A person may enter a conspiracy after it has been formed and before its final completion and assist in carrying out the conspiracy, and thereby be a part of such conspiracy even though he was not a member of such conspiracy at the time of its inception. By the giving of this instruction, the court does not mean to express any opinion as to whether there was or was not a conspiracy in the case at bar.

Now, you will determine from all the evidence in the case whether there was such a conspiracy as is charged in this indictment. If there was a conspiracy, there is no guilt unless some overt act is done toward carrying out the

conspiracy. It is charged in the indictment that certain overt acts were done with reference to carrying out the conspiracy and in pursuance of the conspiracy.

Now it is not necessary that the government prove that all of the overt acts were done; it is sufficient if it is shown they conspired and that one or more of the overt acts was performed in carrying out the conspiracy. I will say to you that it is not necessary that an act in carrying out the conspiracy be an overt act or criminal act in itself, for example, in a mail fraud case, if one carried on a fraudulent scheme, if it be carried on through the mails, it would be an overt act, the carrying out of the conspiracy would be putting a stamp on the envelope and sending it through the mail. An overt act may be innocent of itself, but if it is an act which is calculated to carry out or to effect the conspiracy, then it becomes an overt act.

As I said to you in the beginning, and which I think I should repeat, before you can find the defendants guilty, you must find from the evidence beyond a reasonable doubt that they are guilty from the evidence which you have heard or the lack of evidence or failure of evidence, that convinces [fol. 141] you beyond a reasonable doubt that they are guilty.

COLLOQUY OF COURT AND COUNSEL

Now, I will go back in chambers and I will ask counsel whether or not you have any further suggestions.

Whereupon the following proceedings were had in chambers, outside the hearing and presence of the jury:

The Court: Now, I want to see if I have overlooked anything here, any matters that I may have overlooked that you want me to give instructions on.

Mr. Powers: I don't think of any, your Honor.

Mr. Rankin: Judge, you started several times on the intent, but you never finished that to my satisfaction.

The Court: I thought I did.

Mr. Rankin: You said the clear and present danger, that was all right, and you said something about the intent.

The Court: I will tell them that they must prove the intent, if I didn't.

Mr. Kelly: I think you went into that very thoroughly, your Honor.

Mr. Connor: I think, if your Honor emphasizes it again——

The Court: I will say that I didn't make that clear, I am just making it clear then.

Mr. Connor: All right.

Mr. Rankin: I thought that last comparison you made was unfortunate, as to putting the stamp on the envelope, because here we have a question of mailing out of this stuff, and the very thought of putting a stamp on the envelope might indicate to the jurors' mind an overt act which would stick anybody.

The Court: I will tell them that that was just an illustration, it is not charged here that that was an overt act.

Mr. Rankin: Now, you mentioned an overt act, and I don't know whether these jurors know what an overt act is.

The Court: I said the overt acts were charged in the indictment, and they would have to prove the overt acts, or one of them.

Mr. Rankin: But do they know what an overt act is? That is the legal proposition.

The Court: Well, they charge that these defendants did certain things that were overt acts, and I think everything charged in there would be an overt act. I said they have got to prove them.

[fol. 142] Mr. Rankin: But does the jury know what an overt act is?

The Court: Well, I said that they must prove the overt acts. The indictment sets out certain overt acts. They don't need to have a definition of an overt act.

Mr. Rankin: All right.

The Court: I will say that.

Anything else?

Mr. Rankin: Well, yes, your Honor, one thing, maybe it may seem inconsequential but in connection with the statements, the statements made out of court——

The Court: Were not evidence against anybody.

Mr. Rankin: Now, there were certain statements here and I was just wondering as you stated that whether the jury might think that that was all right as to what persons said out of Court.

The Court: I will say that it includes written statements.

Mr. Rankin: That is what I say. I might say, I was pleased with the explanation or the expression about Judge Holmes.

Mr. Powers: You are referring to pamphlets sent out of a similar type as in this indictment, you made some statement, that there were pamphlets prior to the war that were sent out, written by these people, and I was wondering—whereas Mr. Mecartney's stuff was received by him apparently, it was not sent out.

The Court: You are correct, I didn't say anything about receiving.

Mr. Powers: There is an inference about sending them out.

The Court: I had that in my notes, but I didn't give it.

Mr. Rankin: My client remarked to me as we came in here, something about eighteen and sixty, as to the draft age, or something like that, with the thought, I suppose, that it would be sent to mature persons.

The Court: Everybody who testified to getting pamphlets here were between eighteen and sixty, in the draft age.

Mr. Kelly: That is right.

Mr. Rankin: I couldn't quite see the significance of it, but he seemed to see something.

The Court: Now, what does the government have?

Mr. Kelly: On that instruction with regard to the presumption of the consequences, your Honor——

[fol. 143] The Court: I told them that they were at liberty to infer.

Mr. Connor: While we are going over this, I don't see anything wrong in this one here (indicating).

The Court: I don't think I will go back over that.

Mr. Finn: There has been no directory instruction by the government on this question, on the question of intent, there has been no directory instruction.

The Court: I told them in determining the question of intent that they should take into consideration all the circumstances in the case and take the language used and the theory which may be inferred that the defendants intended the probable consequences of the language.

Mr. Rankin: I thought that was a little more liberal than the government was entitled to.

The Court: I think I stated it to the jury.

Mr. Rankin: If you make a statement with reference to the specific intent, the particular intent, whatever you want to call it, I will be satisfied with it.

The Court: With what they have here?

Mr. Rankin: No, but satisfied with what has been done.

The Court: I said I was going to give that.

Mr. Rankin: All right.

Mr. Connor: On the question of the military service, I think you covered the military service pretty well, but I was just wondering if you would care to read this one here; you might enlarge on the definition of the military and naval forces.

The Court: I said the military and naval forces includes not only men actually in the army and military forces but all persons subject to.

Mr. Connor: Did you say Selective Service Act?

The Court: Yes.

Mr, Connor: That's all right, if you said that.

The Court: I think I did.

Mr. Kelly: If the court please, you say clear and present danger. I don't want to argue with your Honor, but it seems to me that that language is in a dissenting opinion.

The Court: No, it is in his own opinion, in the court's opinion. That was said in the court's opinion.

Mr. Rankin: That was in the Shenk case.

The Court: Yes.

Mr. Rankin: Where there was a full court.

The Court: There was no dissension in that case.

[fol. 144] Mr. Rankin: No. The Shenk case has never been overruled.

The Court: That is a criterion that is used time after time.

Mr. Connor: What are you going to do on the question of intent? Are you going to give further instructions on that?

The Court: Yes, I said I would.

Mr. Connor: I think you have done all right.

The Court: I will instruct them practically as I thought I had before, that the intent must be proven, and that if it is not proven, that they cannot find the defendants guilty. I will tell them, in determining whether there was an intent, they must take into consideration the facts and circumstances in the case, the nature and character of the language

used in the pamphlets, and they are then at liberty to presume the defendants' intent.

Mr. Rankin: Not to presume, to infer.

The Court: Well, at liberty to presume, at liberty to presume that the defendants intended the probable and necessary consequences of the words used.

Mr. Kelly: I think you covered that, Judge.

The Court: I am going to tell them that counsel thought I did not instruct fully on the question of intent.

Mr. Connor: We didn't.

The Court: Well, I won't distinguish.

Mr. Connor: Don't you think in going over it and repeating it that you unduly emphasize it?

The Court: No, I am going to tell them that some counsel thought I did not instruct fully on that.

Mr. Kelly: Except for this one juror who has to take notes, he took very copious notes, your Honor.

The Court: Well, he is not a shorthand reporter. I don't think it can do any harm.

Are there any exceptions that the parties desire to take to any part of the instructions?

The statute says it shall be done. I don't want that done in the presence of the jury, and I would like to wind this up.

Mr. Rankin: With the exception I would like to note, Judge, is with reference to that statement of——

The Court: You me-n at liberty to presume?

Mr. Rankin: Yes, and the probable consequences, that part of it. We fought that out here before.

[fol. 145] The Court: Yes, we fought that out here before. You have your exception.

Mr. Rankin: Yes, exception to it.

The Court: All right.

Whereupon the following proceedings were had in open court, in the hearing and presence of the jury:

ADDITIONAL INSTRUCTIONS TO JURY

The Court: It was thought by some of the counsel that I did not instruct you fully on the matters that are charged in the indictment.

It is necessary for the government to prove that the defendants intended to interfere with the enlistment and recruiting services and intended to cause insubordination.

I thought I covered that, but if I did not, that is a necessary element of an offense, and in determining whether there was such an intent you must consider all the evidence in the case, the nature of the language used, the circumstances under which it was used, and you are at liberty to presume that the defendants intended the natural and probable result of the language used.

Now, with reference to the illustration of putting a stamp on a letter, I did not mean, and it is not charged here as being an overt act, putting a stamp on the letter. That was simply an illustration of what might constitute an overt act. An act to be an overt act in pursuance of a conspiracy need not in itself be a criminal act if it is an act in pursuance to effect the conspiracy, for the purpose of effecting the conspiracy.

I said something to you about the statements made by an individual defendant, statements made out of court, made by an individual defendant in which he mentions other defendants; that was not to be taken as evidence against that other defendant. I include in that the written statements taken in the F. B. I. office, any statement, whether in writing or a statement made by one of the defendants out of court is not evidence against any other defendant.

Then in reference to the question of persons subject to enlistment, or persons subject to enlistment under the Selective Service Act of the United States, it includes persons from eighteen to sixty.

Now, ladies and gentlemen of the jury, I will have to give you your forms of verdict yet.

First, as to Elmer Hartzell, if you find the defendant [fol. 146] Elmer Hartzell guilty as charged in each count of the indictment, or all the counts of the indictment, the form of your verdict will be:

"We, the jury, find the defendant Elmer Hartzell guilty as charged in the indictment."

That will be signed first by the foreman or the forewoman; you will elect a foreman or forewoman when you retire to your jury room.

If you find that he is not guilty as to any of the counts in the indictment, the form of your verdict will be:

"We, the jury, find the defendant Elmer Hartzell not guilty as charged in the indictment."

If your verdict should be that he is guilty as to some counts and not guilty as to others, then your form of verdict will be:

"We, the jury, find the defendant Elmer Hartzell guilty as charged in counts," numbering specifically the counts of the indictment, "and not guilty as charged in counts numbered," numbering specifically the number of the counts of the indictment.

Whatever form of verdict you return will be signed in the same manner as indicated.

Then as to the defendant Newell Mecartney, there will be three forms of verdict of the same character that I have read to you, and you will take them with you.

As to the defendant Elmer William Soller, there will be three forms of verdict and you will fill out the forms in accordance with your findings in each case.

The two alternate jurors will now be discharged, you will not be required to serve further on this case and you will separate from the other jurors.

The jury may retire to the jury room. The exhibits will be taken into your room.

(Exhibits taken to jury room and considered by the jurors.)

And thereupon the jury returned their verdict in and by which they found the defendant, Elmer Hartzel, guilty on all counts of the indictment and found the defendant, Elmer William Soller, guilty as to Counts 5, 6 and 7, of the indictment, and not guilty as to Counts 1, 2, 3 and 4.

Thereupon the said defendants, Elmer Hartzel and Elmer William Soller, moved the Court to grant the said defendants a new trial of the cause.

And thereupon the said motions for a new trial came on [fol. 147] for hearing and were argued by the respective counsel for said defendants and for the Government.

Thereupon the Court having considered the arguments of counsel delivered the following opinion:

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—33721) * *

MEMORANDUM OPINION OF JUDGE HOLLY

The defendants are indicted in this case charged with unlawfully causing and attempting to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States and wilfully obstructing the recruiting and enlistment to service of the United States. The indictment consists of five counts. The first count charges the defendants with wilfully publishing and distributing and causing the publication and distribution of a certain document entitled "The British: An Inferior Breed" which was calculated and intended by the defendants to induce persons eligible and available for recruiting and enlistment in the military and naval service of the United States to fail and refuse to enlist for such service and to refuse to submit to registration and selection for said service.

The second count was based upon the same document and charged the defendants with publishing and circulating the same document knowing that said document was calculated and intended by defendants to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces to the injury of the service of the United States.

The third count charges the publication and distribution by defendants of a certain other document entitled "The Jew Makes a Sacrifice" well knowing that said document was calculated and intended by defendants to induce persons available and eligible for recruiting and enlistment to fail and refuse to enlist for service in the military and naval service in the United States and to induce said persons to refuse to submit to registration and selection for such service.

The fourth count charges the preparation and circulation of the same document well knowing that it was cal- [fol. 148] culated and intended by defendants to cause insubordination, disloyalty and mutiny and refusal of duty

in the military and naval forces of the United States to the injury of the service of the United States.

The fifth count is of the same character as the first and third and is based upon a certain other document which was described in the evidence as being entitled "The Diseased Spinal Cord."

Count Six is based upon the same document and makes the same charges as the second and fourth counts.

Count Seven is a conspiracy count based upon the publication, circulation and distribution of the aforesaid documents for the purposes set forth in the preceding counts.

The jury returned a verdict finding the defendant Hartzell guilty on all counts of the indictment and the defendants Soller and Mecartney guilty as to the 5th, 6th and 7th counts only.

Defendants have moved for a new trial asserting that the evidence does not support the verdict and raising certain questions as to the admission of evidence and the instructions.

First as to the defendant Hartzell. I am convinced that the jury was justified in returning a verdict finding this defendant guilty on all counts. The documents in question were written and distributed after this nation was at war with Germany and Japan. The circular entitled "The British: An Inferior Breed" charged, among other things, that "The Germans keep 'em flying," meaning the British, "wherever they find them. They run at the mouth as well as the bowels"; and "They are now fighting for Christ with Bloody Joe." The question is asked "Who betrayed America to the empire of the British-Jewish yellow-race? Rosenfeld. We are the victims of his Infantilism; he cannot stand alone." Again "Are Americans United: Yes. Externally with the corpus of a degenerate empire; internally with the sick body of 'our leader.'"

Other portions of the pamphlet are as follows: "What is behind the doctrine of 'no appeasement'? * * * The effort of the Jew-vicious persecutor of peoples—to save himself. * * * The beginning of insanity as the masses of the so-called 'democracies' are led toward the destruction of Europe, homeland of the West."

"Why was Pearl Harbor evidence of Justice? While trying to save a yellow race in the Atlantic we were hit a [fol. 149] deadly blow by a yellow race in the Pacific. Like

a cow hit on the head by a hammer when led to slaughter, we now follow 'our leader' as he moves forward on a sick spine to war."

In the circular "The Jew Makes a Sacrifice: The forthcoming Collapse of America" it was said, among other things, "Indeed like a snake forced from its nest, the slimy blood lust of the 'holy people' now stands revealed—for is it not evidence that the Jew Hates bloodshed only when his own skin is in danger?" * * * "Today, in fact, almost any crime may be committed in his name in connection with fine words such as 'freedom'. How else justify blood soaked booms; attempts to starve Europe by blockade; an alliance with bloody Joe; and the massing of enormous quantities of men and materials with which to 'crush' the Germans—except by offsetting the degeneracy of such acts by declaring them to be dictated by the 'spirit'."

"The oriental Japanese struck at Port Arthur in 1904, and at Pearl Harbor while negotiating. The Jew does not have their manfulness for open warfare, but he will—while conserving his own blood—eventually strike those with whom he lives in the back. He is now infiltrating into the Government jobs under cover of 'no race prejudice'. He is, in fact, 'dying' for the coming of bolshevism by making ready for your collapse. After many of the young men of America are killed—when the sick, exhausted, the cunning remain—then he will, as in Russia, crawl from his nest."

In the circular a portion of which is set out in Count 5 of the indictment entitled "The Diseased Spinal Cord" there appears the following:

"Wilson died an invalid; Roosevelt became president as one. What is the *social* significance of his condition?

"*United with a paralytic.*

"With the cunning and sweetness of a cripple he kept us out of war. His duplicity is in part a result of a lack of coordination between brain and injured nervous system. Connected with the accompanying inferiority is a fear of isolation—a craving to be united. He would as a consequence extend his sickness all over the world. Almost everyone then would be equal, united, with no one able to stand alone.

"Not long ago we 'saved ourselves' by a program of relief, from the enervating effects of which we were unable to rise by manful effort. From the accompanying decay

[fol. 150] an external enemy was needed upon which to fasten the blame. Uniting with the decaying carcass of the British empire and war against the Germans were taken as solutions to the problem: they serve as counterpoises to our internal breakdown. For the condition of which his illness is a symptom requires continually widening spheres of action to prevent breakdowns from its ravages.

"*The enemy within.*

"Hidden with the present program to save humanity are germs of infantilism, paralysis and death. For we now follow, not a little child, but a man with a child's disease.

"I dare you to hit me said our leader to the 'bad' dictators. He now twists on his weak spine as we move irresistibly toward the feared spectre—isolation. For as the people of Europe slowly unite to repel invaders who mouth over phrases about peace, God and civilization, many are beginning to recoil with horror from a proposed invasion of Americans who, as before, would only accentuate world revolution.

"Crush my enemies screams Jewry; be bold; take the offensive; we'll back you up. We're fighting for freedom says our leader, with his sick body coiled around the brain as with a snake prepared to strike. We're fighting to save Poland say the British hysterically; we hat- other peoples aggression.

"America was betrayed. The butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves by:

"A stench from rotting carcasses of those who would again invade Europe;

"Starvation for millions of British who thought they could starve others;

"Dissolution from an internal war of race against race;

"Occupation by foreign troops until we are able to stand alone; and at last

"The appointment of a bedside cabinet to investigate the condition of (Rosenfeld) our leader."

Six hundred copies of each of these pamphlets were sent out by Hartzell. They were sent to various people and organizations, among others, labor unions, America First Committees, District and State Commanders of the American Legion, We, the Mothers Mobilize and Kiwanis Clubs and other like organizations.

Whether the distribution of these pamphlets would have a tendency to cause insubordination, disloyalty and refusal [fol. 151] of duty in the military and naval forces of the United States and obstruct recruiting and enlistment was a question for the jury to determine. The meaning *of* the words convey is that we are engaged in an unholy and unrighteous war; that America has been betrayed by "Rosenfeld" to the "British-Jewish yellow race"; that behind the determination of the nation to carry on the war is the "disease of a paralytic who wants to be a hero as compensation for his ailments" and that Pearl Harbor was evidence of justice. All through the pamphlet runs the charge that this is not a war brought upon us by the attack of our enemies, but that the Jews for their own selfish purposes have brought us needlessly into the conflict, that America was betrayed by the President and the Jews, and that the "butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves by * * * occupation by foreign troops until we are able to stand alone."

These pamphlets are unlike some of those sent out during the war upon which we entered in 1917 which some members of the Supreme Court found not to be intended to interfere with recruiting or to cause insubordination or disloyalty. Those were issued to promote the cause of a political party or propagate the economic or political theories of those who composed and published them. The pamphlets put out appear on their face to have but one purpose, to interfere with the prosecution of the war. For the first time in our history our freedom as a people and our existence as a nation are threatened. We were directly attacked and war was declared upon us by powerful enemies. It is because of this that our young men are called upon to enlist in our armies. This defendant circulated literatare telling them we were led into the war by a paralytic seeking glory, solely for the benefit of the Jews.

The obvious effect of the distribution of these pamphlets it seems to me, would be to discourage and hamper enlistments and recruiting and to cause insubordination and disloyalty by those members of our military and naval service into whose hands they might fall. And it must be remembered that not only those who have been inducted but also all those who under the law are subject to the draft.

It is urged, however, that to constitute the crime charged in the indictment it must appear not only that the litera- [fol. 152] ture was calculated to have the effect charged in the indictment but that it was intended it should have that effect. Counsel say the evidence does not show that intent. I cannot agree. All of the circumstances of the case, it seems to me, the very language of the pamphlets composed and distributed by Hartzell show such intent. For what purpose other than hindering the carrying on of the war in any way did he have or could he have had in mind? He appeared on the stand to be an unusually shrewd person. The story he tells of his education and his activities indicate that whatever he does is deliberate and with a definite purpose. He is not a fanatic attached to a cause, having political and economic theories for the liberation of oppressed peoples as were the defendants in *Pierce* v. *United States*, 252 U. S. 239, and *Abrams* v. *United States*, 250 U. S. 616, where Justices Holmes and Brandeis in dissenting opinions found that the literature distributed by the defendants had as its purpose propagating certain economic ideas rather than interfering with enlistment or recruiting or insubordination or disloyalty to the army. In this case the jury were warranted in presuming from the preparation and circulation of the literature that Hartzell intended to obstruct enlistment and recruiting and to cause insubordination and disloyalty in the military service of the United States. Every sane man is presumed to intend the natural and probable results of his deliberate acts. *House* v. *United States*, 78 F. (2d) 301, *Bentall* v. *United States*, 262 Fed. 744, *People* v. *Wilson*, 342 Ill. 358, 365. Counsel urge that this rule applies only in negligence not in criminal cases, but the contrary is the law.

Counsel, contending that defendants were within their constitutional rights in criticising the war, call my attention to some of the things said in the dissenting opinion in *Abrams* v. *United States*, 250 U. S., and *Pierce* v. *United States*, 252 U. S. 239, and to the opinion of Mr. Justice Thompson speaking for the court in *City of Chicago* v. *Tribune Co.*, 307 Ill. 595. But as Mr. Justice Holmes said in *Schenck* v. *United States*, 249 U. S. 47:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring

about the substantive evils that Congress has a right to prevent."

In that case and in *Debs* v. *United States*, 249 U. S. 211, [fol. 153] the court held that the words were such and were used in such circumstances as to create a clear and present danger that would bring about the substantive evil that Congress had a right to prevent i.e., interference and obstruction of enlistment and recruiting and insubordination and disloyalty in the military forces of the United States. It is true that Hartzell would not likely reach as many people with his pamphlets as Debs and Schenck did, but that presents only a question of degree. To obstruct the enlistment of a simple person or to cause or attempt to cause the insubordination of a single member of the military forces of the United States is sufficient to constitute the crime.

Neither is it necessary that it be shown that any person was caused to refuse to enlist. As Justice Holmes said in this same case, "It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced * * * If the act, (speaking or circulating a paper) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime."

Further in the opinion in the Schenck case Justice Holmes said:

"When a nation is at war words that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court would regard them as protected by any constitutional right."

And in *City of Chicago* v. *Tribune Co.*, *Supra*, Mr. Justice Thompson said (p. 603) speaking of the Sedition Law of 1798:

"In so far as this law punished defamation of the President or any other person and in so far as it punished those who advocated resistance to law or rendered aid to a foreign foe, it was, of course, constitutional."

In my opinion the jury were justified in finding that the pamphlets would have the effect and were prepared and circulated by Hartzell with the intent charged in the indictment. The motion for a new trial will be overruled as

to him and it is the sentence of the court that he be imprisoned for a term of five years.

As to the defendant Sollers I am of the opinion that the verdict is justified by the evidence. He realized the character of the matter he was producing. By his own testi- [fol. 154] mony he had inquired of Newell Mecartney whether it was proper to be put out. Mecartney refused to advise him. That should have been sufficient warning. His only excuse for assisting Hartzell was the money he was receiving. He was, however, a mere dupe. I am not inclined to inflict severe punishment. His sentence will be imprisonment for a period of one year and one day.

Since the verdict was returned in this case I have caused an abstract of the evidence concerning Newell Mecartney to be made. There appears to be no evidence at all in the record that he had any active part in the distribution of the pamphlets produced by Hartzell. The most that the evidence shows is that he did nothing to prevent it. But that does not make him a participant in the crime. He may be anti-Semitic and hate the administration in Washington. He may have sympathized with Hartzell, as contended by the Government, and have been perfectly willing that Hartzell should obstruct enlistment and recruiting but he cannot be convicted for merely standing by and permitting Hartzell to engage in the criminal activities charged.

I am not overlooking the speech he made in which he spoke of Pearl Harbor being a well deserved punishment, etc. But the context shows that he was not expressing sympathy with Japan nor opposition to our war effort at that time. I am of the opinion that on the evidence in this record I should have directed a verdict of not guilty as to him. His motion for a new trial must be granted.

And Thereupon the Court having considered said motions overruled and denied the same, to which ruling of the Court said defendants excepted.

Thereupon the said defendants moved the Court in arrest of judgment, which motion the Court overruled and denied, to which ruling of the Court the defendants excepted.

Thereupon the Court gave judgment upon the said verdicts and sentenced the defendant, Elmer Hartzel, to imprisonment for a term of five years, and sentenced the defendant, Elmer William Soller, to serve a term of one year.

Which Was All the Evidence Heard, considered material

to said cause, and all the proceedings had upon the trial thereof, necessary or material to be shown in this Bill of Exceptions. That the Exhibits not shown herein in exact copy are sufficiently described in the testimony of witnesses testifying thereto.

[fol. 155]. CERTIFICATE TO BILL OF EXCEPTION

Forasmuch Therefore as the matters and things herein above set forth do not otherwise appear of record, the defendants, Elmer Hartzel and Elmer William Soller, tender this their joint and several Bill of Exceptions containing the evidence introduced at the trial of said cause pertaining to the charges against them contained in said indictment, together with the rulings of the Court and the exceptions allowed, and the exhibits necessary to the understanding of the case; and upon stipulation of the parties and it appearing that the trial judge William H. Holly is ill and unable to attend and be present in court within the time fixed by the Circuit Court of Appeals being May 27, 1943 to settle the Bill of Exceptions herein and perfect the appeal in said court, and I, the undersigned, Judge of the United States District Court, do find that each and every matter therein contained is true and correct and the same is hereby signed, sealed, settled and allowed as a full, true, and correct Bill of Exceptions of the said defendants in this cause.

Dated this 27th day of May, A. D. 1943.

Philip L. Sullivan, Judge of the United States District Court, Northern District of Illinois, Eastern Division at Chicago. (Seal.)

OK Ode L. Rankin, Atty for Hartzel.

OK Wm. J. Powers, Attorney for Elmer Soller.

OK John J. Kelly, Jr., Ass't United States Atty.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—33721)

ORDER OVERRULING MOTIONS FOR DIRECTED VERDICT, ETC.—
Entered January 13, 1943

This being the day and hour to which the further trial of this cause was on yesterday continued comes the United

[fol. 156] States by the United States Attorney come also the defendants Elmer Hartzel, Elmer William Soller and Newell Mecartney in their own proper persons and by their counsel comes also the Jury and alternate Jurors duly elected empaneled and sworn herein for the trial of this cause and thereupon this cause coming on to be heard upon the defendants motions for a directed verdict after arguments of counsel and due deliberation by the Court said motions are overruled to which ruling of the Court each defendant by his attorney duly excepts and the Jury having heard the arguments of counsel and charge of the Court retire with sworn marshal to consider of their verdict and it is

Ordered that the alternate Jurors Thos. F. Kerr and Arthur E. Gabee be and they are hereby discharged from rendering a verdict herein and it is

Further Ordered that this cause be and the same is hereby continued to January 14, A. D. 1943 at 10:15 o'clock A. M.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—33721)

VERDICT—January 14, 1943

This day comes the United States by the United States Attorney come also the defendants Elmer Hartzel, Elmer William Zoller and Newell Mecartney in their own proper persons and the Jury heretofore empaneled and sworn herein for the trial of said cause also come and say "We the Jury find the defendant Elmer Hartzel guilty as charged in the indictment." "We the Jury find the defendant Newell Mecartney guilty on counts five, six and seven and not guilty on counts one, two, three and four." "We the Jury find the defendant Elmer William Soller guilty on counts five, six and seven and not guilty on counts one, two, three and four," whereupon all defendants by their attorney enter herein their motion for a new trial in said cause which motion is entered and set for hearing on January 23, A. D. 1943, and it is

[fols. 157-162] Ordered that the bonds of the defendants Newell Mecartney and Elmer William Soller are to remain in full force and effect.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—33721)

JUDGMENT—Entered February 8, 1943

This day comes the United States by the United States Attorney comes also the defendant Elmer Hartzel in his own proper person and thereupon this cause coming on to be heard on the defendant's motion heretofore entered herein for a new trial in said cause after arguments of counsel and due deliberation by the Court said motion is overruled and a new trial denied to which ruling of the Court the defendant duly excepts whereupon the defendant enters herein his motion in arrest of judgment which motion is also overruled to which ruling of the Court the defendant duly excepts and the defendant being asked by the Court if he has anything to say why the sentence and judgemnt of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the Verdict of guilty so rendered by the Jury aforesaid that the defendant Elmer Hartzel be committed in the Custody of the Attorney General for a period of Five (5) Years.

It Is Further Ordered that the execution of the mittimus be stayed for a period of 30 days.

William H. Holly, United States District Judge.

February 8, 1943.

* * * * * * *

[fol. 163] IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—33721) * *

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH DISTRICT—Filed February 13, 1943

Name and address of appellant: Elmer Hartzel, 5610 Dorchester Ave., Chicago, Illinois.

Name and address of appellant's attorneys: Benedict J. Short, 10 South LaSalle Street, Chicago, Illinois. Ode L. Rankin, 134 North LaSalle Street, Chicago, Illinois.

Offense: Violation of Sections 33 and 34, Title 50, United States Code Annotated, by certain alleged seditious acts and conspiring to do certain alleged seditious acts.

Date of Judgment: February 8, 1943.

Brief description of Judgment or Sentence: Imprisonment in a penitentiary for a term of five years.

Name of prison where now confined if not on bail: County Jail, Cook County, Ill.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above mentioned on the grounds set forth below.

Elmer Hartzel, Appellant.

Dated: February 12th, 1943.

[fol. 164] Grounds of Appeal:

1. The indictment in said cause is insufficient to sustain a conviction.

2. No one count in said indictment is sufficient to sustain a conviction.

3. The evidence does not prove beyond reasonable doubt that this defendant was guilty as charged.

4. The Court erred in admitting improper evidence on behalf of the Government.

5. The Court erred in refusing to admit proper evidence on behalf of this defendant.

6. The verdict of the jury is against the law and the evidence.

7. The Court erred in instructing the jury.

8. The Court gave to the jury improper instructions with reference to the intent necessary to constitute the crimes charged.

9. The verdict of the jury is the result of passion, prejudice and war hysteria.

10. The Court erred in overruling the motion of this defendant at the close of the Government's case to instruct the jury to find this defendant not guilty as charged.

11. The Court erred in overruling the motion of this defendant at the close of all the evidence in the case to find this defendant not guilty of the charges in the indictment.

12. The Court erred in admitting in evidence improper, impertinent, irrelevant, and immaterial testimony and documentary evidence and exhibits.

13. The evidence does not show beyond a reasonable doubt that this defendant was guilty of a specific intent to commit the crimes charged in the indictment.

Wherefore this defendant says that he did not receive a fair and impartial trial in this cause according to the laws of the United States, the Constitution thereof, and the law of the land.

Elmer Hartzel, Appellant.

Benedict J. Short, Ode L. Rankin, Attorneys for Appellant.

[fol. 165] PROOF OF SERVICE

I hereby acknowledge receipt of a copy of the foregoing Notice of Appeal and Grounds for Appeal, this 13th day of February, A. D. 1943.

Wm. J. Connor, Asst. U. S. Atty., United States District Attorney.

* * * * * * *

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—33721) * *

ASSIGNMENT OF ERRORS—Filed May 24, 1943

Now comes Elmer Hartzell, defendant, and assigns errors upon the record of said cause and says that the following errors intervened in said cause:

1. The Court erred in denying defendant's motion to find him not guilty as to each count of the indictment.

2. The Court erred in denying defendant's motion for a new trial.

3. The Court erred in denying defendant's motion in arrest of judgment.

4. The Court erred in sentencing the defendant upon the record made.

5. The Government did not prove the defendant guilty beyond reasonable doubt and the Court erred in submitting the cause to the jury and in rendering judgment upon the verdict of the jury.

6. The indictment does not charge a crime under the Act of Congress in question and the Court erred in submitting the cause to the jury and in rendering judgment upon the verdict of the jury.

7. The evidence produced by the Government did not prove a violation of the Act of Congress in question and the Court erred in submitting the cause to the jury and in rendering judgment upon the verdict of the jury.

8. The Court erred in admitting improper evidence on behalf of the Government and in refusing to admit proper evidence on behalf of the defendant.

[fol. 166] 9. The verdict of the jury is against the manifest weight of the evidence and the Court erred in rendering judgment upon the verdict.

10. The defendant's consfitutional rights were violated and invaded by the said judgment of conviction.

11. The Court erred in instructing the jury.

12. The Court gave to the jury improper instructions with reference to the intent necessary to constitute the crimes charged.

13. The verdict of the jury is the result of passion, prejudice and war hysteria.

14. The Government did not show beyond a reasonable doubt that this defendant was guilty of a specific intent to commit the crimes charged in the indictment and the Court erred in rendering judgment upon said verdict.

15. That the statute and laws under which the defendant was convicted and sentenced is void for ambiguity and uncertainty.

Elmer Hartzell, by B. J. Short, Ode L. Rankin, His Attorneys.

IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—33721) • •

ORDER—Entered February 24, 1943

It Is Ordered by the Court that the bond of the defendant Elmer Hartzel on appeal be and the same is hereby fixed at the sum of Five Thousand Dollars ($5000) and the bond for the defendant Elmer William Soller be and the same is hereby fixed at the sum of Two Thousand Five Hundred ($2,500) Dollars and bill of exceptions as to each defendant to be filed by April 8, A. D. 1943.

[fol. 167] IN THE DISTRICT COURT OF THE UNITED STATES

• • • (Caption—33721) • • •

ORDER—Entered April 8, 1943

On motion of counsel for the defendants it is

Ordered that the time to docket the record on appeal to the Circuit Court of Appeals and to approve the bill of exceptions be and the same is hereby extended to fifteen (15) days from this date.

IN THE DISTRICT COURT OF THE UNITED STATES

• • • (Caption—33721) • • •

ORDER—Entered April 15, 1943

On motion of counsel for the defendant Elmer William Soller it is

Ordered that the Clerk of this Court be and he is hereby ordered to certify to the Circuit Court of Appeals the following exhibits of record: Numbers 60, 45, 46, 37, 36, 42, 30A, 43 and 31.

IN THE DISTRICT COURT OF THE UNITED STATES

• • • (Caption—33721) • • •

ORDER APPROVING BILL OF EXCEPTIONS—Entered May 27, 1943

This day come the defendants by their attorneys and present herein their Bill of Exceptions which Bill of Ex-

[fol. 168] ceptions is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

IN THE DISTRICT COURT OF THE UNITED STATES

* * * (Caption—33721) * * *

PRAECIPE FOR RECORD—Filed April 21, 1943

To the Clerk:

The Clerk will please prepare a transcript of the record for use on appeal to the United States Circuit Court of Appeals for the Seventh District and include therein the following documents and orders:

1. Indictment.
2. Plea of each of the said defendants.
3. Appearance of B. J. Short for defendant Hartzell.
4. Motion of defendant Hartzell for directed verdict at the close of the Government's case.
5. Motions for directed verdict at the close of all the evidence.
6. Verdict as to each of the said defendants.
7. Judgment order on February 8, 1943 as to each of the said defendants.
8. Notice of Appeal for defendant Soller.
9. Notice of Appeal for defendant Hartzell.
10. Order of February 24, 1943 as to bond and Bill of Exceptions.
11. Order of March 9, 1943 approving appeal bond of defendant Soller. (Clerk's notation: no order.)
12. Order of April 8, 1943 extending time to docket record on appeal and to approve Bill of Exceptions.

[fols. 169-172] 13. Order of April 15, 1943, directing the Clerk to certify certain exhibits.

14. Bill of Exceptions.
15. Praecipe for Record.
16. Any additional Praecipe for Record.
17. Order approving Bill of Exceptions to be entered.

18. Any other orders subsequently entered or documents filed affecting the appeal.

William J. Powers, Attorney for defendant, Elmer William Soller. B. J. Short, Ode L. Rankin, Attorneys for defendant, Elmer Hartzell.

[Clerks' Certificates to foregoing transcript omitted in printing.]

* * * * * * *

[fol. 173] [Caption omitted.]

[fol. 174] In United States Circuit Court of Appeals, Seventh Circuit

8253

The United States of America, Plaintiff-Appellee,

vs.

Elmer Hartzel, Defendant-Appellant

8264

The United States of America, Plaintiff-Appellee,

vs.

Elmer William Soller, Defendant-Appellant

Order Taking Cause under Advisement—September 28, 1943

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come the parties by their counsel, and these causes come on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Wm. J. Powers, counsel for appellant Elmer William Soller, Mr. Ode L. Rankin, Counsel for appellant Elmer Hartzel, and by Mr. William J. Connor counsel for appellee, and the Court takes these matters under advisement.

[fol. 175] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM AND SESSION, 1943

No. 8253

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

ELMER HARTZEL, Defendant-Appellant

No. 8264

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

ELMER WILLIAM SOLLER, Defendant-Appellant

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before SPARKS, MAJOR and KERNER, *Circuit Judges*.

OPINION—Filed October 14, 1943

MAJOR, *Circuit Judge*. Appellants Hartzel and Soller, together with one Mecartney, were tried by a jury and found guilty of violating Secs. 3 and 4 of the Espionage Act (Secs. 33, 34, Title 50, U. S. C. A.). The indictment contained seven counts, the first six of which charged the substantive offense of sedition, while count 7 charged a conspiracy to commit such substantive offense. A motion for new trial was allowed as to Mecartney and the cause dismissed as to him. Judgment was rendered against Hartzel and Soller, who have perfected separate appeals. They may both be appropriately disposed of in one opinion.

The substantive counts are predicated upon three pamphlets, entitled "The British: An Inferior Breed"; "The [fol. 176] Jew Makes A Sacrifice: Forthcoming Collapse of America"; and "The Diseased Spinal Cord." In all of such counts, it is charged that the defendants prepared, published and distributed such pamphlets throughout the United States, while the United States was at war. Counts 1, 3 and 5 alleged that by such action the defendants wilfully and knowingly obstructed the recruiting and enlistment service of the United States, and counts 2, 4 and 6 that the

defendants wilfully and knowingly did cause and attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, and that the defendants well knew that said pamphlets would produce the result complained of.

It perhaps would serve no good purpose to set forth all these pamphlets in their entirety, and certainly it would unduly lengthen this opinion. The one entitled "The British: An Inferior Breed" is in question and answer form, as follows:

"*Are they degenerate?*

"Plainly. Never again shall they be permitted to try to bring the slinking death of starvation to Europe, squealing hysterically as they do so about 'freedom'.

"*What is the present position of our 'protectors'*, proclaimed saviors of Poland?

"Now on the lease-lend dole, they are a kept woman.

"*Are they a cultured people?*

"Standing as an outpost to the continent of Europe, they are a parasite on its art, science and civilization.

"*In what way are they kept flying?*

"The Germans keep 'em flying wherever they find them. They run at the mouth as well as the bowels.

"*Will the British Isles be policed?*

"It will be unnecessary. When the people upon whom they are fastened withdraw their support, they will collapse.

"*What is the new blasphemy?*

"Making Christianity a slimy thing for those who crawl and creep by an island breed which—possessed of an empire obtained by aggression—points the finger of guilt at others. They are now fighting for Christ with bloody Joe.

"*Who betrayed America* to the empire of the British-Jewish yellow race?

[fol. 177] "Rosenfeldt. We are victims of his Infantilism; he cannot stand alone.

"*Are Jews rushing forward to war* after urging you to crush 'em?

"No. But when America is exhausted they, as in Russia, will slither forth to sink their fangs into its body.

"*Are Americans united?*

"Yes. Externally with the corpus of a degenerate empire: internally with the sick body of 'our leader.'

"*What is behind the doctrine of 'no appeasement'?*

"The fear of aggression on the bloated domains of an empire which cannot stand alone;

"The inhuman cruelty of America's first blood soaked boom;

"The rumble of world revolution—a repercussion of its indecencies;

"The effort of the Jew—vicious persecutor of peoples—to save himself;

"The disease of a Paralytic who wants to be a hero as compensation for its ailment;

"The beginning of insanity as the masses of the so-called 'democracies' are led toward the destruction of Europe, homeland of the West.

"*Why was Pearl Harbor evidence of justice?*

"While trying to save a yellow race in the Atlantic we were hit a deadly blow by a yellow race in the Pacific. Like a cow hit on the head by a hammer when led to slaughter, we now follow 'our leader' as he moves forward on a sick spine to war."

The pamphlet entitled "The Jew Makes A Sacrifice: The Forthcoming Collapse of America" is in part as follows:

"Our blood soaked boom of the first World War was followed by a speculative orgy, then collapse. A similar maladjustment now seeks an outlet in another blood soaked boom which will end as before. In all of this the Jew—oriental hyphenated American, propagandist for bloody Joe and the British (Jewish) empire—has been an eager participant. Indeed, like a snake forced from its nest, the slimy blood lust of the 'holy people' now stands revealed—for is it not evident that the Jew hates bloodshed only when his own skin is in danger?

* * * Today, in fact, almost any crime may be com- [fol. 178] mitted in his name in connection with fine words such as 'freedom'. How else justify blood soaked booms; attempts to starve Europe by blockade; an alliance with bloody Joe; and the massing of enormous quantities of men and materials with which to 'crush' the Germans—except by offsetting the degeneracy of such acts by declaring them to be dictated by the 'spirit'.

"The oriental Japanese struck at Port Arthur, in 1904, and at Pearl Harbor while negotiating. The Jew does not have their manfulness for open warfare, but he will—while conserving his own blood—eventually strike those with whom he lives in the back. He is now infiltrating into Government jobs under cover of 'no race prejudice'. He [illegible], in fact, 'dying' for the coming of bolshevism by making ready for your collapse. After many of the young men of America are killed—when the sick, the exhausted, the cunning remain—then he will, as in Russia, crawl from his nest. * * *"

The pamphlet entitled "The Diseased Spinal Cord" is in part as follows:

"Wilson died an invalid; Roosevelt became president one. What is the social significance of his condition?

"A clue is given in the statement that syphilis is 'the result of an illness of moral, social and racial instincts' of which prostitution is an integral part. Similarly the breakdown of Wilson after the 'peace' was probably connected with reactions from the emotional debauchery of preceding years. It is, therefore, suggested that the epidemic of paralysis in New York State at a later time had a source in the weakening of nervous systems, brought about by the emotional self-masturbation of stories of the 'bad' Germans.

"Our leader—safe in Washington—escaped the actual horrors of war, but he could not escape the virus of a child's disease. As with syphilis his paralysis is indicative of severe maladjustments within the nation. He reproduces within his body our internal breakdown; he is in fact a degenerate who now seeks ways of having us cure him of his ailment. * * *

"Hidden within the present program to save humanity are germs of infantilism, paralysis and death. For we now follow, not a little child, but a man with a child's disease. * * *

[fol. 179] "Crush my enemies screams Jewry; be bold; take the offensive; we'll back you up. We're fighting for freedom says our leader, with his sick body coiled around the brain as with a snake prepared to strike. We're fighting to save Poland say the British hysterically; we hate other peoples aggression.

"America was betrayed. The butchery, misery and death they would take to Germany must now, if necessary, be returned upon ourselves by:

"A stench from rotting carcasses of those who would again invade Europe;

"Starvation for millions of British who thought they could starve others;

"Dissolution from an internal war of race against race;

"Occupation by foreign troops until we are able to stand alone; and at last

"The appointment of a bedside cabinet to investigate the condition of (Rosenfeld) our leader."

That defendant Hartzel was the author of these pamphlets, and sent several hundred of them through the United States mail, is not disputed. There were also introduced as bearing upon the question of intent and purpose numerous other articles and pamphlets of the same general tenor, prepared and circulated by him prior to the entry of the United States into the present war.

Both Hartzel and Soller urgently insist that the proof failed to present a jury question and that the court erred in its refusal to direct a verdict in their favor. In deciding this question, we need not consider the proof as it pertains to each count of the indictment for the reason that the judgment could have been imposed upon any of the substantive counts. If the proof is sufficient to sustain any count, an affirmance is required. *Abrams* v. *United States*, 250 U. S. 616, 619. It follows, therefore, that we need not discuss defendants' argument that the proof fails to show a successful accomplishment of the alleged objectives. Counts 2, 4 and 6 charge the defendants with an "attempt to cause, insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States." Whatever room there may be for difference of opinion as to whether an accomplished result must be proved when alleged, there seems little, if any, merit in the [fol. 180] contention that such proof is required to sustain an attempt to cause such result.

It is argued that the publications in controversy were permissible as free speech, guaranteed by the Constitution. Certainly free speech is not an empty privilege, even during a time of war, but on the other hand, the right is not

without limitation. As was said by the court in *Schenck* v. *United States*, 249 U. S. 47, 52: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." Location of the boundary line between that which is privileged and that which is restrained is ofttimes difficult to determine. Generally, it must be found from the character of the utterance, in connection with the time, place and manner of its making. As was said in the *Schenck* case, *supra*, page 52:

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

A charge of attempt to accomplish that which Congress has proscribed must depend upon intent or motive, and ordinarily presents a jury question. As was said by the court in *Pierce* v. *United States*, 252 U. S. 239, 249:

> "If its probable effect was at all disputable, at least the jury fairly might believe that, under the circumstances existing, it would have a tendency to cause insubordination, disloyalty, and refusal of duty in the military and naval forces of the United States."

And again, the court on the following page stated:

> "What interpretation ought to be placed upon the pamphlet, what would be the probable effect of distributing it in the mode adopted, and what were defendants' motives in doing this, were questions for the jury, not the court, to decide."

It is true, as pointed out by the defendants, that in the [fol. 181] Pierce case, as well as in some of the other cases in which the Supreme Court has announced a similar rule, the alleged seditious pamphlets or speeches contain some

direct reference or appeal to those eligible for or actually engaged in the military service. No doubt in such instances the intent or motive is more readily apparent. We are of the view, however, that the test enunciated by the Supreme Court as to what constitutes a seditious utterance is not to be limited merely to those cases where a direct appeal is made. If the condemned utterance is reasonably calculated to produce the proscribed result, the purpose and motive is within the province of a jury.

Defendant Hartzel stated his motive thus:

> "Finally, the prime motive which impelled me in writing and distributing the articles discussed above, was the hope that they might tend to create sentiment against war amongst the white races and in diverting the war from them, to unite the white races against what I consider to be the more dangerous enemies, the yellow races."

It is inconceivable that his defamatory statements concerning the President, the British or the Jews, could have created any sentiment against war or have been any aid in uniting the white against the yellow races. It is equally inconceivable that the attacks were made with any such motive. It is likewise inconceivable that any purpose was sought to be achieved consistent with the welfare of the country. On the other hand, it is entirely reasonable to believe that the purpose was to interfere with the successful prosecution of the war. It must be assumed, we think, that Hartzel expected those who read his pamphlets to accept their contents as the truth; otherwise, there could have been no purpose in their circulation. Certainly it cannot be reasonably insisted that the defamatory and vicious attack made upon the President of the United States, the Commander-in-Chief of the armed forces of the nation, if believed as the defendant Hartzel expected, would not seriously affect, if not destroy, the morale of the nation, both the civilian and the military. With the morale thus destroyed, insubordination, disloyalty and mutiny would be the inevitable result. Publications concerning the British and the Jews, if believed, would no doubt produce a similar result.

[fol. 182] It may be, we hope it is a fact, that there are few if any persons in this country so naive as to place any credence in the articles complained of, and it may be that

no great harm resulted from their publication. Assuming such to be the case, Hartzel is not relieved of attempting to do that which Congress has proscribed.

Even though an intent is the gist of the offense, it is not necessary that such intent be shown by direct proof. It is to be gathered from the defendants' acts, together with the surrounding facts and circumstances. We see no reason why the intent in a case of the instant character may not be found in the same manner as in any other case where it is an essential element. If a person deliberately shoots at another without reason or excuse, he would be guilty of an assault with intent to kill. We suppose that if he deliberately fired a gun into an assembly of people, all of whom were strangers, he likewise would be guilty of an assault with intent to kill any person who might be injured. It is a familiar rule of law, and we think applicable in the instant case, that a person who acts in reckless disregard of the rights of others is liable for the consequences of such acts. Under such circumstances, he is presumed to intend that which is calculated to result from his act. "Men must be held to have intended, and to be accountable for, the effects which their acts were likely to produce." *Abrams* v. *United States, supra*, page 621. We are of the view that a jury question was presented as to Hartzel, especially under counts 2, 4 and 6.

As to the defendant Soller, a different situation is presented. If the judgment against him is affirmed, it must be solely upon the ground that he mimeographed the alleged seditious pamphlets. The proof discloses that Soller first met Hartzel in March or April of 1941, when the latter came to his office and made inquiry as to the price of mimeographing, in which business Soller was engaged. On three occasions, Soller mimeographed pamphlets from manuscripts furnished by Hartzel. He charged and was paid his usual compensation for such work. There is no proof that Soller at any time prior to doing the work was advised or had knowledge of the use to which the pamphlets were to be put by Hartzel. True, after the third and last lot of pamphlets had been delivered to Hartzel, Soller became suspicious and upon inquiry learned from Hartzel that the pamphlets were being sent through the mail. Soller as a [fol. 183] witness even denies that he had knowledge of the contents of the pamphlets, except as to certain words which attracted his attention as they were being mimeographed.

Incredible as this may sound on its face, a reading of his testimony furnishes support to the plausibility of such statement. At any rate, there is no proof as to his knowledge. A few minor circumstances relied upon by the government are without significance.

We are of the view and so hold that the proof was not sufficient to present a jury question as to Soller and that he was entitled to a directed verdict. What we have said applies to the conspiracy as well as the substantive counts. The proof fails to show an agreement between these two defendants or that they were acting in concert or in a conspiracy, as charged.

Complaint is also made of the court's charge as it pertains to the matter of intent. What we have said on that subject largely disposes of the criticism and we shall not discuss it further.

The proof being sufficient to present a jury question on some of the counts as to the defendant Hartzel, the judgment as to him is affirmed. As to the defendant Soller, it is reversed.

[File endorsement omitted.]

[fol. 184] In United States Circuit Court of Appeals, Seventh Circuit

* * * * * * *

No. 8253

The United States of America, Plaintiff-Appellee,

vs.

Elmer Hartzel, Defendant-Appellant

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment—October 14, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And afterwards, to-wit: On the twenty-fifth day of October, 1943, there was filed in the office of the Clerk of this Court, a Petition for Rehearing.

. . . . . .

[fols. 185-202] Petition for rehearing, covering 15 pages, omitted from this print. It was denied, and nothing more by order of Nov. 10, 1943.

[fol. 203] In United States Circuit Court of Appeals, Seventh Circuit

[Title omitted]

Order Denying Petition for Rehearing—November 10, 1943

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied.

In United States Circuit Court of Appeals

[Title omitted]

Order Staying Mandate—November 12, 1943

On motion of counsel for appellant, it is ordered that the issuance of the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

. . . . . .

[fol. 204] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

DESIGNATION OF PORTIONS OF RECORD—Filed November 16, 1943

To Kenneth J. Carrick, Clerk of the U. S. Circuit Court of Appeals, 1212 Lake Shore Drive, Chicago.

Please prepare Transcript of Record for use on petition for certiorari to the Supreme Court of the United States, and include therein the following:

1. Printed Transcript of Record of the District Court.
2. Order, showing argument of cause and case taken under advertisement.
3. Opinion of Court.
4. Order of Affirmance.
5. Printed Petition for Rehearing.
6. Order denying Petition for Rehearing.
7. Order staying mandate of the Court.

Ode L. Rankin, Benedict J. Short, Attorneys for Appellant.

[fols. 205-206] STATE OF ILLINOIS,
County of Cook, ss:

Gwendolyn Steel, being first duly sworn, deposes and says that she served the foregoing Designation of Portions of Record upon the attorney for Plaintiff-Appellee, by mailing a true copy thereof to him, proper postage prepaid, in an envelope, addressed as follows: J. Albert Woll, Esq., U. S. District Attorney, Federal Court House, Chicago, Illinois, that she deposited said envelope in a United States mailbox located in the building at 134 North LaSalle Street, Chicago, Illinois, on November 15, 1943.

Gwendolyn Steel.

Subscribed and sworn to before me this 15th day of November, A. D. 1943. Bessie Belencak, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 207] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 208] SUPREME COURT OF THE UNITED STATES

* * * * * * *

ORDER ALLOWING CERTIORARI—Filed January 10, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 209] IN THE SUPREME COURT OF THE UNITED STATES

* * * * * * *

STIPULATION AS TO PRINTING OF THE RECORD—Filed January 27, 1944

It is hereby stipulated by and between the Solicitor General on behalf of the respondent and Ode L. Rankin, attorney for the petitioner, that in order to reduce the cost of reprinting the record for use on writ of certiorari, the Clerk in reprinting may omit the following from the printed record filed with the petition for a writ of certiorari:

(1) The title of cause No. 8264—*United States v. Elmer William Soller*—From the title page of the record filed in the circuit court of appeals;

(2) The name of Delphine Reich and the lines "Government's Exhibit 31—Statement of Elmer William Soller" on page i of the index to the record filed in the circuit court of appeals, and the lines "Elmer William Soller," "Judgment as to Soller," "Notice of Appeal of Soller," "Assignment of Errors on behalf of Soller" on page ii;

(3) Page 23, line 18, in the third paragraph, beginning with the sentence, "I tried to find out who sent these articles through the mails," to page 28, line 25, ending with the words "The Diseased Spinal Cord," which conclude the second full paragraph on that page;

[fol. 210] (4) Page 29, beginning with the line "*Cross Examination by Mr. Powers*" (folio 56), to page 32 down to the line "*Cross Examination by Mr. Short*" (folio 60);

(5) Page 34, fifth line from the bottom, beginning "Thereupon," to page 42, folio 68;

(6) Page 42, folio 69, to page 45, folio 72;

(7) Page 67, folio 99, to page 69, folio 102;

(8) Page 81, folio 118, the lines "As to Soller Only" and "Exhibits 31, 32, as to Soller only";

(9) Page 95, folio 142, to page 123, line 14, ending with "keep it on the Q. T.";

(10) Pages 158 to 162, inclusive;

(11) Page 184, second line from the bottom, the clause "which said petition is in the words and figures following, to wit";

(12) Pages 185 to 201, inclusive;

All as indicated in the attached copy of the printed record filed with the petition for a writ of certiorari.

It is further stipulated that either party may refer in the briefs and on the oral argument to any portion of the certified record filed with the petition for writ of certiorari which is not required to be reprinted pursuant to this stipulation.

Ode L. Rankin, Attorney for Petitioner. Charles Fahy, Solicitor General.

January 1944.

[fol. 211] [File endorsement omitted.]

Endorsed on cover: Enter Ode L. Rankin, File No. 48,024, U. S. Circuit Court of Appeals, Seventh Circuit, Term No. 531. Elmer Hartzel, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed December 10, 1943. Term No. 531 O. T. 1943.